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Canada. Restrictive Trade
Practices Commission

Report



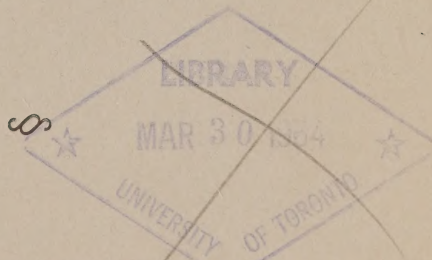
~~RESTRICTIVE TRADE PRACTICES COMMISSION~~

REPORT

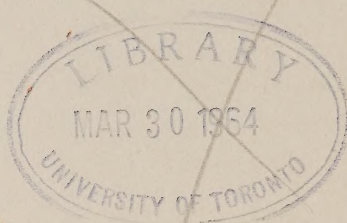
Concerning the Distribution and Sale of
Coal in Sault Ste. Marie, Ontario



DEPARTMENT OF JUSTICE
OTTAWA



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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING THE DISTRIBUTION AND SALE OF
COAL IN SAULT STE. MARIE, ONTARIO

COMBINES INVESTIGATION ACT

Ottawa
1960

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RESTRICTIVE TRADE PRACTICES COMMISSION

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RESTRICTIVE TRADE PRACTICES COMMISSION

OTTAWA

July 26, 1960

Honourable E. Davie Fulton, P.C., Q.C., M.P.,
Minister of Justice,
Ottawa.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with the distribution and sale of coal in Sault Ste. Marie, Ontario.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in the inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of sections 18 and 19 of the Act.

Evidence and argument in regard to the Statement of Evidence were heard by the Commission in Sault Ste. Marie on February 8 and 9, 1960. In these proceedings Mr. F. N. MacLeod appeared on behalf of the Director of Investigation and Research and Mr. W. G. H. Bennett, Q.C. on behalf of Sault Dock Company Limited, J. H. McMaster and McMaster Fuels Limited; Mr. C. T. Murphy on behalf of Soo Falls Brewing Company Limited and Mr. C. B. Noble on behalf of Lyons Fuel, Hardware and Supplies Limited.

As the hearing in this inquiry was held before Mr. Pierre Carignan, Q.C. assumed his duties as a Member of the Commission, he took no part in the preparation of this report.

Yours faithfully,

(Sgd.) C. Rhodes Smith

C. Rhodes Smith
Chairman

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CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry was brought before the Restrictive Trade Practices Commission by the Director of Investigation and Research under the Combines Investigation Act, pursuant to section 18 of the Combines Investigation Act, R.S.C. 1952, Chapter 314, as amended by Chapter 51 of the Statutes of Canada, 1953-54, which reads as follows:

- "18. (1) At any stage of an inquiry,
- (a) the Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to section 32 or 34 of this Act, or section 411 or 412 of the Criminal Code, and
 - (b) the Director shall, if so required by the Minister, prepare a statement of the evidence obtained in the inquiry, which shall be submitted to the Commission and to each person against whom an allegation is made therein.
- (2) Upon receipt of the statement referred to in subsection (1), the Commission shall fix a place, time and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel.
- (3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection (1) together with such further or other evidence or material as the Commission considers advisable.
- (4) No report shall be made by the Commission under section 19 or 22 against any person unless such person has been allowed full opportunity to be heard as provided in subsection (2)."

A Statement of the evidence obtained in the inquiry was prepared by the Director of Investigation and Research and submitted under date of December 8, 1959 to the Restrictive Trade Practices Commission and to the companies against whom allegations were made therein.

2. Conduct of the Inquiry

During the course of the inquiry conducted by the Director of Investigation and Research visits were made by representatives of the Director, pursuant to authorizations granted by the Commission, to the following companies engaged in the coal business in Sault Ste. Marie, Ontario: McMaster Fuels Limited, Soo Falls Brewing Company Limited and Lyons Fuel, Hardware and Supplies Limited. In each case, documents were selected and taken away for examination and copying and then returned. Documents were also obtained from Mr. Whitney J. Downey, former General Manager of Mutual Coal & Dock Co. These documents were all marked with code letters in the upper right-hand corner to indicate the particular premises on which they were found, and each sheet of every document was marked with a separate serial number in the lower right-hand corner which enables it to be distinguished from all other documents. In this report the serial number will be given in referring to a particular document placed before the Commission.

The Director also asked for and obtained written returns of information from the respective companies under the authority of the Combines Investigation Act.

Oral evidence was obtained by the Director at hearings held before Mr. C. Rhodes Smith, Q.C., Chairman, Restrictive Trade Practices Commission, at Sault Ste. Marie on August 4 and 5, 1959, when the following witnesses were examined:

Whitney J. Downey, former General Manager of Mutual Coal & Dock Co.
James H. McMaster, President and General Manager of McMaster Fuels Limited
Richard H. Beaumont, President and General Manager of Lyons Fuel, Hardware and Supplies Limited
John M. Coulter, Executive Vice-President and General Manager of Soo Falls Brewing Company Limited
(and various associated companies).

Mr. C. Harry Lyons, former Manager of Lyons Fuel, Hardware and Supplies Limited, had also been called as a witness but was unable to attend because of illness.

The Director also obtained information about the sale and distribution of coal in Sault Ste. Marie, including particulars of tenders submitted, from such sources as the Board of Education, Sault Ste. Marie and various Government Departments having buildings in Sault Ste. Marie for which coal was purchased.

On receipt of the Statement of Evidence the Commission, in accordance with the provisions of Section 18 of the Act, by an order dated December 21, 1959, fixed Monday, the 8th day of February, 1960 at the hour of 10 o'clock in the forenoon in Room 107, New Federal Building, in the City of Sault Ste. Marie, Province of Ontario, as the date, time and place at which argument in support of the Statement of Evidence could be submitted and at which persons against whom any allegation had been made in such Statement would be allowed full opportunity to be heard in person or by counsel. Subsequently the time of the hearing was changed to 2.30 o'clock in the afternoon of February 8, 1960.

At the hearing, which concluded on February 9, 1960, the following appearances were entered:

Mr. F. N. MacLeod	for the Director of Investigation and Research
Mr. W.G.H. Bennett, Q.C.	for Sault Dock Company Limited, J. H. McMaster and McMaster Fuels Limited
Mr. C. T. Murphy	for Soo Falls Brewing Company Limited (carrying on business under the name "Purity Ice & Coal Co.")
Mr. C. B. Noble	for Lyons Fuel, Hardware and Supplies Limited.

One witness, Mr. Richard H. Beaumont, President and General Manager of Lyons Fuel, Hardware and Supplies Limited gave evidence at the hearing and certain exhibits, numbered H. 1 to H. 3 were received.

Whenever reference is made in this report to the transcript of the evidence taken at the hearing on August 4-5, 1959, it will be done as follows: (Evidence, p. ...). Whenever reference is made to the transcript of the hearing before the Commission on February 8-9, 1960, it will be made as follows: (Hearing, p. ...).

3. Parties Mentioned in the Statement of Evidence

The following brief descriptions of coal dealers in Sault Ste. Marie are based on those given in the Statement of Evidence:

McMaster Fuels Limited (referred to in the Statement and in this report as "McMaster", except where the full name is used to avoid confusion with its President, J. H. McMaster) is the largest coal dealer in Sault Ste. Marie. On the basis of total volume of business in all lines the company is smaller than the other two dealers, but coal is only one part of the businesses of these dealers, while coal and fuel oil are the only business of this company. The company is the successor to or has taken over the businesses of two firms which were formerly dealers - District Services Limited and Mutual Coal & Dock Co.

District Services Limited formerly operated a chain of service stations and a coal and fuel oil business. It had two branches, Southern (Sault Ste. Marie) and Northern. The Northern Branch was sold to The British American Oil Company Limited about 1950 and the Southern Branch was sold to the same company about the end of September 1953. The British American Oil Company Limited then sold the coal division of the Sault Ste. Marie operations to J.H. McMaster. Mr. McMaster had been with District Services Limited, first as Northern Manager and then as General Manager, for a number of years. Mr. McMaster operated the coal business he had purchased under his own name until the beginning of 1954 when he incorporated McMaster Fuels Limited to carry on the business.

Mutual Coal & Dock Co.* (referred to in the Statement and in this report as "Mutual") was the name used by Sault Dock Com-

* The following note about the records of Mutual is given in the Statement of Evidence:

"While McMaster has preserved some of the records of Mutual, these records have been transferred to dead storage and, while some examination of these records was made (and certain ones were selected for copying), it was not considered practical to re-sort them as would have been necessary for a complete and detailed examination. Nor, because of the time and effort which would be involved and the uncertainty of obtaining complete and correct information, has it been thought proper to request a return of information about the business done by this firm. Some information about Mutual has been disclosed by the returns of information about the businesses of the other dealers (such as sales to or purchases from Mutual) and from information about tenders submitted. Such information as is available is included in the Statement, but it is necessarily much less complete than in the case of the other dealers. Similarly, information about District Services Limited, which has now been out of business for over six years, is very scanty."

pany Limited for its retail coal division. In or by 1954, Mr. McMaster had acquired one-third of the shares of this company. He later acquired an additional block and, on May 1, 1958, all of the remaining shares. The company's coal operations were then merged with those of McMaster Fuels Limited. It will be noted that while Mr. McMaster owned a substantial interest in Sault Dock Company Limited, that company was a separate and distinct dealer (under the name "Mutual") until 1958.

Lyons Fuel, Hardware and Supplies Limited (referred to in the Statement and in this report as "Lyons") is important in the hardware and building supply field. Its fuel business accounts for only about ten per cent of its total volume of business. There have been no changes in name during the period with which the inquiry is concerned, but there have been important changes in management and control. About November 1958, a group including R. H. Beaumont and J. M. Coulter (see Soo Falls Brewing Company Limited below), purchased the shares of the company principally from the estates of members of the Lyons family. R. H. Beaumont became President and General Manager. C. H. Lyons who had previously been Manager, retired from the business.

Soo Falls Brewing Company Limited is primarily engaged in other activities than the business of coal dealing which accounts for only about two and one-half per cent of its total business. The company is, itself, a large user of coal which may be the reason why it is in the coal business (Evidence, p. 126). The Executive Vice-President and General Manager is J. M. Coulter who is referred to above in connection with Lyons. The division of the company handling coal sales uses the registered name "Purity Ice & Coal Co." (referred to in the Statement and in this report as "Purity").

4. Conclusions and Allegations Contained in the Statement of Evidence

The conclusions and allegations of the Director of Investigation and Research are set out in the following paragraphs in the Statement of Evidence:

"30. The allegations made in this Statement are that the retail coal dealers in Sault Ste. Marie agreed on the prices at which coal would be sold and that such dealers were parties to an arrangement whereby profits from sales to certain institutional accounts were shared according to an agreed formula.

. . .

57. . . .

(1) Coal can be laid down more cheaply in Sault Ste. Marie if it is brought in by ship rather than by rail. Witnesses estimated the difference in laid-down cost at from \$2.00 to \$3.00 per ton. Other information supports these estimates.

(2) The alternative method of bringing in coal by rail means that there is no danger of a shortage in the event of miscalculation, unexpectedly heavy demand or the like. Additional coal can always be obtained, even when navigation is closed, but such coal costs more.

(3) Coal is brought in by rail in small quantities from time to time for various reasons.

(4) McMaster, the largest dealer, sells coal not only in Sault Ste. Marie and vicinity, but also to communities and mines in Northern Ontario. These are serviced through Michipicoten, Midland and Little Current. Coal can be brought to these points by ship and frequently is. However, these points also enjoy competitive freight rates so that coal can also be shipped in by rail at a comparative laid-down cost. Coal brought in to these points does not enter the local Sault Ste. Marie market.

(5) In the result, the retail coal trade in Sault Ste. Marie has developed on the basis of the bulk of the coal being brought in by ship. Of the balance, some is purchased by the dealers from another firm which imports coal but is not in the retail coal trade. All of the coke sold by the dealers is purchased locally from Algoma Steel Corporation Limited.

(6) Coal brought in by ship can be handled most economically by being stored on the docks and drawn on as required. Since most coal is brought in on self-unloading vessels, this means that it need only be screened (where necessary) and loaded on a truck for delivery to the consumer. Rehandling of the coal is thus reduced to a minimum.

(7) For the reasons outlined, both the possession of dock space and the size of such dock space is very important. The size of the dock space is significant because coal delivered by ship normally comes in large quantities at one time and, in any event, coal for the winter season of peak demand must be brought in and stock-

piled before the winter freeze-up halts navigation.

(8) Dock space is and has been at a premium in Sault Ste. Marie. Deep-water frontage is limited and this frontage is all presently occupied by docks, most of which are used for other purposes. The small dock space now available to coal dealers cannot be increased by renting additional space because none is available for rental. [1] Nor is it practical to build new docks as deep-water frontage for such docks could only be created by dredging.

(9) The shortage of dock space has had important consequences in the retail coal trade. It has limited both the total quantity and the types and varieties of coal which dealers have been able to stock. It also seems to have been one of the main factors which has kept the number of dealers down. Mr. Downey inquired about dock space shortly before Mutual was absorbed by McMaster and presumably might have entered the retail coal field if he had been able to obtain dock space.

(10) The fact that the amount and the types and varieties of coal which can be stocked are limited has had secondary consequences. Among these is the practice of the dealers buying from each other and the fact that it is not always possible for a dealer to supply the exact type of coal called for in invitations to tender.

(11) Slack coal has, according to the evidence, always been a problem to the retail dealers. The amount of Slack produced depends on various factors. Its disposal presents difficulties because the demand for such coal in Sault Ste. Marie is limited.

(12) For a number of years, the coal dealers have had an arrangement whereby profits on sales to certain institutional accounts have been divided among the dealers, regardless of which dealer actually supplied the coal.

(13) The evidence of W. J. Downey, formerly General Manager of Mutual, was that, for the years 1953 to 1957 when he was connected with the retail coal trade, a meeting of the retail coal dealers was held each year at which the selling prices of coal were fixed and that such prices

[1] Evidence given to the Commission in February, 1960 indicates that this situation has since changed to some extent.

were, in fact, followed. Messrs. McMaster and Coulter, of McMaster and Purity respectively, denied that meetings to fix prices were held, but did testify that meetings to discuss the arrangements on institutional accounts were held and that costs and shipping rates and other related matters were discussed generally.

(14) The regular prices charged by the several dealers for comparable types of coal were substantially uniform for the years 1954 to 1958 inclusive, about which the dealers supplied information.

(15) Tenders and quotations also appear to have been substantially uniform when comparable grades of coal were offered.

(16) Certain witnesses argued that the arrangements relating to institutional accounts were necessary under existing circumstances. Their argument was that since each dealer's stocks were necessarily limited, a dealer could only tender if it was sure that it could draw on the supplies of the other dealers. Otherwise, if it secured a large number of tenders, it might not be able to service its domestic customers. Perhaps the next year it might not secure any tenders and in the meantime it would have lost many regular customers. By drawing on the supplies of other dealers, this could, of course, be avoided. The sharing of the profits on tenders was said to be necessary to induce the dealers which did not secure tenders to make supplies available to the dealer which did.

(17) While this argument sounds plausible, it does not stand up under examination. In the first place, it is not clear that there was any direct relationship between the tenders awarded to a firm and the amount of coal which that firm purchased from other dealers. In the 1954-55 heating season, for example, McMaster sold the Public School Board 1,802 tons of coal. Presumably any purchases necessary under the theory outlined would have occurred in 1955 during the late winter and early spring. Yet McMaster purchased only 257 tons of coal from other dealers in 1955 and of this, 198 tons were Slack which the sellers were undoubtedly glad to dispose of. Moreover, the bulk of the coal was drawn from Mutual which had, itself, sold more under tender than its theoretical share. In other years, purchases from dealers which had not secured contracts, by dealers which had secured such contracts, were larger. However, the figures for 1955 and the variations in the corresponding figures from year to year indicate that the secur-

ing of contracts was only one factor in determining if one dealer bought from other dealers.

(18) The evidence shows that there was buying and selling among the dealers over the years. In some periods, one dealer might be buying one type of coal from a second dealer, while at the same time it would be selling the second dealer another type. It was almost inevitable that this practice should be followed in the circumstances which existed - it seems to have been a logical and convenient method of dealing with a difficult problem. Undoubtedly, the contracts which a dealer received affected its supply of coal. But the practice of buying and selling among dealers had a much wider basis and was not used only or chiefly because contracts were secured. The practice was beneficial to and convenient for each dealer, even in years when a dealer did not secure any contracts.

(19) Inter-dealer buying and selling was not a one-way transaction in the sense that it was always the buyer which benefited. For example, it has already been mentioned that Slack was hard to dispose of and some of the largest inter-dealer sales involved Slack, presumably to the benefit of the seller which might not have an alternative market for its accumulation of Slack. (It will be remembered that Slack was largely a by-product of Pocahontas coal which was sold chiefly to domestic customers. Because it was required for the domestic trade, each dealer had to stock Pocahontas and necessarily accumulated a certain amount of Slack.) Dealers were also able to dispose of surplus quantities of other types of coal for which there was a limited demand as, for example, when McMaster sold St. Bernard coal to Purity. Finally, the prices charged by the sellers were sufficiently high to yield a profit, although the profit would not be as high as if the coal was sold at retail.

(20) In view of these considerations, it is difficult to accept the argument that the arrangements concerning tenders were directly related to supply. Rather they seem to have been designed to prevent competition among the dealers for the most profitable part of the available business by ensuring that all dealers shared the profits on such business.

(21) The effects of the arrangements are obvious and can be illustrated simply. Again taking the 1954-55 heating season, McMaster supplied the Public School Board with

611 tons Slack @ \$12.00	7,332.00
1,191 tons Stoker @ \$18.50	<u>22,033.50</u>
Total	\$ 29,365.50

Because of the arrangements, McMaster paid the other dealers \$2,361.34 in respect of this coal (its final net payment for the year took into account coal supplied to other institutions). In other words, if the arrangements had not existed, McMaster could have sold the coal for \$2,361.34 less and netted exactly the same amount.

(22) In this particular example, theoretical shares were allocated only three ways because it involved the Public Schools. Hence, in respect of this coal (again, other contracts would enter into final calculations), Lyons and Mutual each received \$1,180.67. Obviously, there would be no inducement for either firm to submit a tender price which would yield a smaller clear net profit.

(23) Mr. McMaster and Mr. Coulter both gave evidence that, in their understanding, the arrangements were still in effect in August 1959. Mr. Beaumont testified that Lyons is no longer a party to such arrangements. If this is correct, presumably the arrangements have now been terminated. However, the effect of the arrangements would have carried over at least until the submission of new tenders for the heating season of 1959-60.

(24) At the time of the hearings in August 1959, Mr. Beaumont also testified that there had been no occasion to change the regular or going prices for coal from the time he joined Lyons until that date. Therefore, the prices being charged up to that date, at least, would have been affected by any price-fixing arrangement which had previously existed.

58. It is my allegation that the retail coal dealers in Sault Ste. Marie, during the period commencing prior to 1952 and continuing, at least, until the early part of 1959, have been parties to a combination, within the meaning of the Combines Investigation Act, by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of preventing or lessening competition in the sale and distribution of coal in the Sault Ste. Marie area and that such combination operated or was likely to operate to the detriment or against the interest of the public; and also that the said dealers have, during the same period, been parties to an arrangement, within the

meaning of section 411 of the Criminal Code, to prevent or lessen competition, unduly, in the sale and distribution of coal in the Sault Ste. Marie area. The retail coal dealers in Sault Ste. Marie during the said period were Lyons Fuel, Hardware and Supplies Limited; Soo Falls Brewing Company Limited (carrying on its coal business under the name 'Purity Ice & Coal Co. '); Sault Dock Company Limited (carrying on its coal business under the name 'Mutual Coal & Dock Co. ') until May 1958; District Services Limited until September 1953; J. H. McMaster from September 1953 until the beginning of 1954; and McMaster Fuels Limited from the beginning of 1954."

5. Position Taken by the Parties with Respect
to the Allegations of the Director

In giving notice of the hearing the Commission, in accordance with its usual practice, had requested the parties to submit, in advance of the hearing, if possible, a statement indicating the position taken with respect to the facts and conclusions set out in the Statement of Evidence. Briefs stating the positions of the parties were submitted to the Commission and these were supplemented in some respects by oral statements at the opening of the hearing. As similar positions were taken on a number of matters the submissions of the several parties may be summarized as follows:

1. The evidence does not support the conclusions that there was a combination within the meaning of the Combines Investigation Act to prevent or lessen competition unduly in the sale and distribution of coal in the Sault Ste. Marie area during the period commencing prior to 1952 and continuing until the early part of 1959, or any part thereof.

2. It was admitted that there was an arrangement among the dealers with reference to the supply of coal to certain public buildings, the agreement being that the successful tenderer was to divide 10 per cent of the selling price among the other dealers concerned. Prior to the institution of the 10 per cent arrangement it had been agreed that the amounts of \$2 and \$4 per ton would be divided among the other dealers depending upon the type of coal.

3. The arrangement was forced on the dealers by circumstances, namely, limited dock space, a relatively short shipping season, the vagaries of the weather, railway freight rates, and delivery time-tables. The arrangement provided that the dealers could look to each other for supplies of coal in the event that a successful tenderer on public contracts depleted his stock beyond the point

where he could service his regular domestic trade.

4. If the arrangement with respect to the division of a percentage of the gross sales on institutional contracts lessened competition, it did not do so unduly, so as to bring the parties within the provisions of section 411 of the Criminal Code.

5. If the arrangement did lessen competition, it did not do so to the detriment of the public, because:

- (a) it eliminated the need to import coal by rail and therefore made coal available to all consumers at a lower cost than would otherwise have been the case;
- (b) there was no evidence of a price spread which would be to the detriment of the public, and there was no evidence of excessive profits. Thus, the essential element to support the allegation is missing, that is to say, detriment to the public.

6. The Statement of Evidence is inaccurate in saying that there was a sharing of 10 per cent of the profits on public tenders. There was a sharing of 10 per cent of the selling price. Conceivably a dealer could make a loss and still have to pay out money to other companies as a result of the 10 per cent arrangement. Ordinarily the supplier would make a profit in addition to his share of the 10 per cent.

7. The Statement of Evidence is wrong in assuming that there was no inducement for a dealer to submit a tender price which would yield a smaller clear net profit than the share that would go to unsuccessful bidders from the successful tenderer. This conclusion ignores the principle that the more a dealer sells the more is his per unit cost reduced. If an unsuccessful bidder had been successful, his profit would have been greater than his share of the cost price which he obtained as an unsuccessful bidder.

8. McMaster's tender and sale of St. Bernard coal to the Board of Education during the heating season 1954-55 demonstrate that the allegation made in paragraph 58 of the Statement of Evidence is unfounded. McMaster tendered on this St. Bernard coal, a coal of slightly lower quality and price than that which the Board of Education had been using, in an effort to regain its contract with that institution. McMaster did not take the risks and trouble involved only to share 10 per cent of the selling price with the other dealers: it must have calculated that despite the arrangement for division of the 10 per cent the venture would yield it an additional profit. McMaster's efforts in bringing in a supply of St. Bernard coal greatly in excess of

the Board of Education's annual requirements is evidence that McMaster had to compete in order to be the successful tenderer. The Board of Education was enabled to save money by McMaster's action in bringing in this St. Bernard coal. McMaster could not have brought in this coal and the Board of Education could not have received this benefit had it not been for the existence of the arrangement between the retail coal dealers which permitted McMaster to look to other dealers for additional supplies.

9. No logical alternative to the above arrangement is conceivable in the absence of additional dock space for unloading coal. The abandonment of the arrangement would cause chaotic conditions: a dealer would not be able to forecast his trade accurately from one year to the next, and would not be able to keep reasonable control of his costs.

10. If the difference between the price per ton of rail-hauled coal and the price per ton of boat-hauled coal would make it uneconomical to merchandise rail-hauled coal in Sault Ste. Marie, then the selling price of coal in Sault Ste. Marie must have been competitive, reasonable, and, therefore, not against the interest of the public.

11. The price of coal in the Sault Ste. Marie area for the period 1952 to 1958 compares very favourably with prices in other cities where comparable circumstances exist (excepting limited dock space) and references will be made to price statistics showing lower prices in Sault Ste. Marie than in some other cities.

12. With regard to the relationship between the amount of coal sold on tender to institutions and the types and amounts of coal bought by dealers from other dealers, the following points were submitted: that McMaster sold more coal to institutional accounts from the 1952-53 heating season through the 1958-59 heating season than any other dealer; that the bulk of the coal so sold by McMaster was stoker coal; that McMaster purchased more coal from local dealers during the same period than any other dealer, exclusive of anthracite coal purchased by Lyons; that the bulk of the coal so purchased was Pocahontas, which is the type in greatest demand by non-institutional accounts. There was, therefore, some relationship between the tenders awarded to a firm and the amount of coal it purchased from other firms. Although this was only one factor, it was a major factor in the pattern of purchases and sales of coal between dealers.

13. The effect of the arrangement with respect to the division among the dealers of 10 per cent of the selling price obtained by the successful tenderer was to keep the price of coal down. In the absence of the arrangement prices would probably have been higher than they were because:

- (a) A company which bids on and has its tenders accepted on a majority or all of the institutional accounts will not be able to service its domestic customers from its available stockpiles;
- (b) Therefore, it must either import rail-hauled coal and sell it at a loss to compete with boat-hauled coal sold by other dealers;
- (c) Or, if it brought in rail-hauled coal and tried to pass on the additional costs to its customers, it would lose its domestic customers to its competitors;
- (d) Or, it will have to abandon part of its domestic business to other dealers and rely upon the uncertainty of institutional accounts, which reliance would entail probably loss of profits in the following year;
- (e) A company contemplating any of these alternatives would charge higher prices than if it could draw on the stockpiles of the other firms to service its domestic customers.

14. All the parties took issue with the evidence of Mr. Whitney J. Downey, with respect to meetings between company representatives about which there was conflicting evidence of Messrs. McMaster and Coulter.

In addition to the foregoing arguments which have general significance in relation to this inquiry, the following submissions were made by Lyons on its own behalf:

(a) There is no evidence to support the allegation that Lyons was party to any arrangement within the meaning of section 411 of the Criminal Code to prevent or lessen competition unduly. Arrangements, to come within the prohibition of section 411, must have the tendency to create a monopoly, or a virtual monopoly, and this tendency has not been proven.

(b) The arrangement regarding the division of 10 per cent of the selling price obtained by a successful tenderer was an arrangement created by the physical problem of dock space. Lyons has now acquired additional dock space, which will permit it to tender on institutional contracts and at the same time be able to service domestic customers.

(c) Since the present management, including Mr. Richard H. Beaumont, took over Lyons, no arrangement regarding tendering on

institutional contracts has been in operation, nor has Mr. Beaumont been approached to satisfy any such arrangement. Any such arrangement is not now necessary. If the agreement had been so profitable, there would have been no incentive for Lyons or any of the parties to attempt to acquire additional dock facilities.

(d) There is no evidence that the present principals of Lyons participated, or even acquiesced, in any of the arrangements alleged by the Director, including the allegations of price-fixing.

CHAPTER II

FEATURES OF THE COAL BUSINESS IN SAULT STE. MARIE

1. Purchases of Coal by Sault Ste. Marie Dealers

At the time of the inquiry there were, as previously indicated, three dealers engaged in the coal business in Sault Ste. Marie, namely, McMaster, Lyons and Purity. Mutual had operated as a separate enterprise until May 1, 1958 when its operations were merged with McMaster. Reference has been made to the fact that full details had not been obtained by the Director as to prior operations of Mutual so that statistics presented in the Statement of Evidence in regard to the coal trade in Sault Ste. Marie were deficient in this respect.

One other firm, Century Coal Company, is engaged at Sault Ste. Marie as a supplier of coal but in so far as the local coal trade is concerned it apparently confines its sales to the three distributors mentioned above.

The following table showing the purchases of coal by the three Sault Ste. Marie dealers is contained in the Statement of Evidence. The table shows the three dealers' currently-purchased supplies of coal for the years 1954-58. To avoid duplication all purchases and sales between the three retail dealers of slack, other types of coal and coke are omitted. Neither does this table show coal purchased by the Century Coal Company, inasmuch as Century Coal Company is not engaged in the retail coal business in Sault Ste. Marie. But the table does include purchases of coal from the Century Coal Company by the three retail firms. The table also includes coke purchased by McMaster, Lyons and Purity from Algoma Steel Corporation Limited. Coal purchased by McMaster for delivery to Midland, Michipicoten and Little Current for trans-shipment to Northern Ontario is excluded.

TABLE I

PURCHASES OF COAL REPORTED BY DEALERS

<u>1954</u>		<u>Ship</u> <u>tons</u>	<u>Rail</u> <u>tons</u>	<u>Local</u> <u>tons</u>	<u>Total</u> <u>tons</u>
McMaster	- Bituminous	7,333	-	741	8,074
	Anthracite	8,755	437	-	9,192
	Coke	-	-	646	646
	Total	<u>16,088</u>	<u>437</u>	<u>1,387</u>	<u>17,912</u>
Lyons	- Bituminous	8,451	-	-	8,451
	Anthracite	2,725	-	-	2,725
	Coke	-	-	3,052	3,052
	Total	<u>11,176</u>	<u>-</u>	<u>3,052</u>	<u>14,228</u>
Purity	- Bituminous	3,363	379	208	3,950
	Coke	-	-	308	308
	Totals	<u>3,363</u>	<u>379</u>	<u>516</u>	<u>4,258</u>
TOTAL TONNAGE ALL DEALERS					<u>36,398</u>

<u>1955</u>					
McMaster	- Bituminous	23,376	160	736	24,272
	Anthracite	5,399	247	-	5,646
	Coke	-	-	483	483
	Total	<u>28,775</u>	<u>407</u>	<u>1,219</u>	<u>30,401</u>
Lyons	- Bituminous	7,401	-	-	7,401
	Anthracite	2,675	-	-	2,675
	Coke	-	-	2,058	2,058
	Total	<u>10,076</u>	<u>-</u>	<u>2,058</u>	<u>12,134</u>
Purity	- Bituminous	3,637	-	190	3,827
	Coke	-	-	188	188
	Total	<u>3,637</u>	<u>-</u>	<u>378</u>	<u>4,015</u>
TOTAL TONNAGE ALL DEALERS					<u>46,550</u>

TABLE I (Cont'd.)

<u>1956</u>		<u>Ship</u> tons	<u>Rail</u> tons	<u>Local</u> tons	<u>Total</u> tons
McMaster	- Bituminous	14,329	-	936	15,265
	- Anthracite	9,607	432	-	10,039
	- Coke	-	-	549	549
	Total	<u>23,936</u>	<u>432</u>	<u>1,485</u>	<u>25,853</u>
Lyons	- Bituminous	4,971	-	882	5,853
	- Coke	-	-	1,661	1,661
	Totals	<u>4,971</u>	-	<u>2,543</u>	<u>7,514</u>
Purity	- Bituminous	2,476	-	180	2,656
	- Coke	-	-	117	117
	Totals	<u>2,476</u>	-	<u>297</u>	<u>2,773</u>
TOTAL TONNAGE ALL DEALERS					<u>36,140</u>

<u>1957</u>					
McMaster	- Bituminous	13,370	-	620	13,990
	- Anthracite	4,899	137	-	5,036
	- Coke	-	-	333	333
	Total	<u>18,269</u>	<u>137</u>	<u>953</u>	<u>19,359</u>
Lyons	- Bituminous	3,811	-	628	4,439
	- Coke	-	-	1,467	1,467
	Total	<u>3,811</u>	-	<u>2,095</u>	<u>5,906</u>
Purity	- Bituminous	2,854	-	243	3,097
	- Coke	-	-	115	115
	Total	<u>2,854</u>	-	<u>358</u>	<u>3,212</u>
TOTAL TONNAGE ALL DEALERS					<u>28,477</u>

TABLE I (Cont'd.)

<u>1958</u>		<u>Ship</u> <u>tons</u>	<u>Rail</u> <u>tons</u>	<u>Local</u> <u>tons</u>	<u>Total</u> <u>tons</u>
McMaster	- Bituminous	10,027	-	330	10,357
	Anthracite	5,116	-	-	5,116
	Coke	-	-	98	98
	Totals	<u>15,143</u>	-	<u>428</u>	<u>15,571</u>
Lyons	- Bituminous	3,887	-	437	4,324
	Coke	-	-	1,395	1,395
	Totals	<u>3,887</u>	-	<u>1,832</u>	<u>5,719</u>
Purity	- Bituminous	2,435	-	84	2,519
	Coke	-	-	-	-
	Totals	<u>2,435</u>	-	<u>84</u>	<u>2,519</u>
TOTAL TONNAGE ALL DEALERS					<u>23,809</u>

Of the anthracite coal brought in by McMaster, the following quantities were sold to Lyons for resale by the latter:

1956	-	2,488 tons
1957	-	2,048 tons
1958	-	1,590 tons

Undoubtedly the most satisfactory of these years for the purpose of assessing shares of the market is 1958. As already mentioned, in May of 1958 McMaster Fuels Limited took over the business of Mutual Coal & Dock Co. Inasmuch as most of the coal used in Sault Ste. Marie is brought into the city by ship during the season of open navigation on the Great Lakes, particularly in the later months of the navigation season, it seems very likely that the year 1958 would give a fairly accurate picture of the total coal supplies entering the retail market in Sault Ste. Marie. For if Mutual brought in any coal during this year, most of it would have been brought in by rail in the early months of the year, and such rail shipments were characteristically a small percentage of the total inbound shipments of coal.

From the above table it can be calculated that in 1958 McMaster purchased 65.4 per cent of the total tonnage purchased by all three dealers, Lyons purchased 24 per cent and Purity the remainder, or 10.6 per cent. While these figures and percentages do not give an accurate picture of the actual sales by the companies,

there is no reason to doubt that they do indicate the order and magnitude of the participation of each of the three firms in the Sault Ste. Marie market. This opinion is confirmed by the oral evidence of Messrs. McMaster, Beaumont and Coulter with respect to the dollar value of the sales of coal by their respective companies.

From the above table, which admittedly is incomplete, there is an apparent over-all decline of 34.6 per cent in purchases of coal and coke by the coal retailers of Sault Ste. Marie and it may be taken that consumption of coal and coke similarly declined. Within this over-all decline it is apparent that anthracite and coke have declined relatively more than bituminous coal. Purchases of anthracite fell from 11,917 tons in 1954 to 5,036 tons in 1957 and to 5,116 tons in 1958, or by 57.1 per cent from 1954 to 1958. Purchases of coke fell from 4,006 tons in 1954 to 1,915 tons in 1957 and to 1,493 tons in 1958, or by 62.7 per cent from 1954 to 1958. Purchases of bituminous coal, by contrast, fell by only 16.0 per cent from 1954 to 1958 (from 20,475 to 17,200 tons). The latter percentage, however, is undoubtedly too low, as there is no figure available for Mutual in 1954.

Analysis of the purchases of bituminous coal reveals the following changes:

	<u>1954</u> tons	<u>1958</u> tons	<u>Change</u> <u>1954-58</u> tons	<u>Change</u> <u>1954-58</u> %
Pocahontas Stove	9,080	6,148	- 2,932	- 32.3
Soft lump	2,501	850	- 1,651	- 66.0
Stoker	8,894	10,202	+ 1,308	+ 14.7

Source: Returns of Information

Purchases (and consumption, presumably) of all the non-stoker coals and of coke declined during the period by substantial percentages. Purchases and consumption of stoker coal, on the other hand, increased. As the total decline in the consumption of coke and non-stoker coals (13,898 tons) far exceeds the increase in the use of stoker coals (1,308 tons), it is clear that such fuels have been replaced by another fuel or fuels.

2. Sources of Coal and Methods of Transportation

(a) Types of Coal Stocked by the Three Retail Dealers

All of the coal sold by the three retail dealers of Sault Ste. Marie originated in the United States. The identification of the company and the mine producing the various coals which are mentioned by their trade names in the documentary evidence and the returns of information reveals that most of these coals originated in Virginia, West Virginia, or Kentucky. Purchases were arranged through Canadian wholesalers or Canadian branch offices of the American coal firms.

McMaster imported into Sault Ste. Marie three types of coal, namely, anthracite, stoker coal, and Pocahontas stove coal. Mr. McMaster testified that he brought in one brand of anthracite coal in three sizes, stove, nut and rice, and McMaster's return of information shows that all three sizes were sold by the firm. This coal is identified in the documentary evidence as "D. & H.", which, presumably, stands for Delaware & Hudson, the name of the railroad which serves The Hudson Coal Company in its mining areas in Luzerne and Lackawanna Counties of Pennsylvania. Of the Pocahontas stove or furnace coals McMaster usually imported one brand, Olga, although Indian Maid was also imported in 1954. This stove or furnace coal was imported in one size, which was then screened into different sizes. In the class of regular grades of stoker coal the following were imported by McMaster: in 1954, 1955, 1957 and 1958 Patsy stoker coal was imported and in 1955, 1956 and 1958 Cavalier stoker coal. These appear to have been McMaster's highest-priced stoker coals, and although they were sold for use in households they were not restricted to this use, for documentary evidence shows that they were tendered to commercial firms and public buildings as well (Serials 213-14, 218, 232, 234). In addition, McMaster imported other grades of stoker coal intended for use in commercial and public buildings. In 1954 this category was represented by Patsy Plus 50, in 1955 by Island Creek and St. Bernard, in 1956 by Pioneer Island Creek, in 1957 by St. Bernard, and in 1958 by Kona. These coals appear to have been sold in the class "industrial stoker" for which a lower price was charged than for prepared stoker or regular grade of stoker (McMaster's Return of Information).

Lyons independently did not bring in from the United States any anthracite coal, but confined its imports to Keen Mountain Pocahontas stove coal and Colonel Jackhorn stoker coal, the latter being sold at or close to the prices charged by McMaster for its most expensive stoker coals. By an arrangement with McMaster Fuels Limited, however, Lyons has obtained anthracite coal from McMaster since 1955, so that both firms sold anthracite to the public,

this coal being stored on McMaster's dock. On one occasion at least, McMaster and Lyons co-operated in bringing in a boat-load of anthracite (Evidence, p. 73).

Purity carried only two brands of coal. One of these was Cavalier stoker, which was sold at prices which were the same as, or which closely approximated, the prices of McMaster's top-line stoker coal. The other was Pocahontas stove coal. Purity consistently imported Cavalier stoker and Olga stove coal. Mr. Coulter testified that St. Bernard stoker coal was sometimes purchased from McMaster (Evidence, pp. 125-26).

In addition to the aforementioned types of coal, all three dealers purchased a so-called "soft lump" from the Century Coal Company in Sault Ste. Marie, the company which imported coal but was not itself in the retail coal business in that city. This coal has been identified in Lyons' returns of information as Century Red Jacket. Red Jacket is a brand name of the Island Creek Coal Sales Co. applied to a coal mined in the town of Red Jacket, Mingo County, West Virginia.

According to their returns of information all three dealers bought coke from the Algoma Steel Corporation, Limited and McMaster also made purchases from Lyons which, as the compilation below shows, had the bulk of the retail coke business.

	<u>1954</u>	<u>1955</u>	<u>1956</u>	<u>1957</u>	<u>1958</u>
	tons	tons	tons	tons	tons
Lyons	3,052	2,058	1,661	1,467	1,395
McMaster	646	483	549	333	98
Purity	308	188	117	115	-
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Totals	4,006	2,729	2,327	1,915	1,493
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>

McMaster's purchases of coke as shown in this table do not include the following amounts purchased from Lyons:

1954	-	412 tons
1955	-	-
1956	-	6 "
1957	-	33 "
1958	-	106.5 tons

In addition to selling the foregoing types of coal and coke, McMaster and Lyons sold slack coal. Purity, however, did not sell any slack coal, consigning all that it obtained to the plant of the Soo Falls Brewing Company Limited (Evidence, p. 125).

Slack coal, as such, was not imported by the three dealers, but resulted from the breakdown of coal in storage. The chief source of slack was Pocahontas stove or furnace coal which was imported by all three dealers in lump form. A less important source of slack was anthracite coal, which was imported in several sizes. The amount of slack produced depended upon the type of coal, the length of time it was in storage, and the weather conditions during storage. For example, Mr. W. J. Downey, formerly of Mutual, testified:

"A. It is hard to explain. Slack coal is the screenings that come from Pocahontas and other coal that we delivered. It has been sold around here -- you actually lose on it. It is just a drug on the market. To get rid of it we have sold it to the steel plant for as low as \$9 a ton."

(Evidence, p. 23)

Mr. McMaster of McMaster testified that the screenings from Pocahontas coal would run around 30 per cent of the tonnage brought in, and that the slack produced by anthracite would be around 8 or 9 per cent. He then went on to say:

"Q. Slack is the --

A. Slack is the screenings.

Q. Do you bring in any slack as such?

A. No. That is the breakage in the coal.

THE CHAIRMAN:

Slack is your bad luck.

BY MR. MacLEOD:

Q. Do you sell that slack?

A. If we can, but there is no sale for slack any more. They are offering \$5 for it at Wawa and the

freight is about \$3.60."

(Evidence, pp. 76-77)

Mr. Coulter of Purity testified:

"A. Yes. Mind you, it is hard to say that because you have a certain amount of degradation. It depends how fast you use it what your coal is going to cost you. Dollars and cents-wise does not necessarily determine the cost of your Pocahontas coal. If you can move it quickly you might run into 10 per cent or 15 per cent degradation; if you carry it for a year you might run into 30 per cent degradation, . . ."

(Evidence, pp. 143-44)

The types of coal and coke stocked by the various dealers fall into four groups:

1. Anthracite - Sold only by McMaster and Lyons

2. Stove or furnace coal:

- (a) Pocahontas sold by all three dealers
- (b) Soft lump sold by all three dealers

3. Stoker coals:

- (a) "Domestic" grade. This grade was imported and stocked by all three dealers. Domestic stoker coal was McMaster's highest-priced grade of stoker coal. (As noted above, so-called "domestic" stoker coals were usable by commercial and institutional customers as well as by householders).
- (b) "Industrial" grades. These were imported by McMaster and sold at prices below those established for domestic stoker coals.

4. Coke. Nut and pea sizes were sold by all three dealers. In addition Lyons alone sold "Coke Breeze" and Purity alone sold "Mixed Coke".

(b) Transportation of Coal

Typically the coal purchased by the three dealers is shipped by rail from the originating mine to ports on the Great Lakes and by lake freighter to Sault Ste. Marie (Evidence, pp. 43-44). In the calendar year 1958 Table I shows that of the total of 22,316 tons of coal purchased by the three retail dealers, 851 tons were bought locally and the remainder, or 21,465 tons, were brought in by ship (and none by rail). Presumably the 851 tons bought locally would be largely, if not entirely, Century Coal Company's "Red Jacket", sometimes referred to as "soft lump", which also is imported from West Virginia. The returns of information of the three companies do, in fact, show that the shipment of coal to Sault Ste. Marie by rail was quite exceptional and accounted for only quite small percentages of the total brought in.

The reason advanced by the parties for this situation was that it was more expensive to bring in coal by rail than by ship. For example, the evidence of J. M. Coulter of Purity was as follows:

"BY MR. MacLEOD:

. . .

Q. What is the difference in price if you bring it in by rail? What is the extra cost?

A. \$2 to \$3 per ton.

Q. Have you any idea what quantity it has been necessary to bring in in a certain year?

A. No, I have not. We have railed some in. I think we have railed as high as maybe 10 or 12 cars. That is the most we have ever railed in. We were very much against it naturally with all the handling involved in it because your margin is cut down to nothing."

(Evidence, p. 136)

Returns of information submitted by the dealers include data on the cost of coal per ton laid down in Sault Ste. Marie during the years 1954-58 inclusive. This material is shown in the following table:

TABLE II

REPORTED COST OF COAL PER TON

1954				Cost of		Laid-down
				Coal	Expenses	Cost
				\$	\$	\$
Anthracite	Lyons	D. & H.	ship	12.25	5.435	17.685
	McMaster	D. & H.	ship	-	-	19.68
			rail	-	-	21.40
Pocahontas	Lyons	Keen				
		Mountain	ship	6.50	5.07	11.57
	McMaster	Olga	ship	-	-	12.28
		Indian				
		Maid	ship	-	-	13.32
	Purity	Olga	ship	6.20-7.30	5.07	11.27-12.37
			rail	6.20-7.30	7.97	14.17-15.27
Stoker	Lyons	Col. Jack-				
		horn	ship	6.40	4.57	10.97
	McMaster	Slab Fork	ship	-	-	12.28
		Patsy	ship	-	-	11.60
		Patsy + 50	ship	-	-	10.20
	Purity	Cavalier	ship	7.30	4.55	11.85
Soft Lump	Lyons	Red Jacket	ship	5.25	4.90	10.15
	McMaster	Century	local	-	-	11.80
	Purity	Century	local	-	-	12.05-11.55
Coke	Lyons	Nut	local	18.50	1.80	20.30
		Pea	local	11.00	1.80	12.80
		Breeze	local	8.00	1.80	9.80
	McMaster	Nut	local	-	-	19.85
		Pea	local	-	-	12.35
	Purity	Nut	local	18.50	.80	19.30
		Pea	local	11.00	.80	11.80

TABLE II (Cont'd)

1955 ^a				Cost of		Laid-down
				Coal	Expenses	Cost
				\$	\$	\$
Anthracite	Lyons	D. & H.	ship	12.25	5.435	17.685
		McMaster	ship	-	-	17.34
		D. & H.,				
		Rice	Rail	-	-	16.49
		D. & H.,				
Pocahontas		Barley	Rail	-	-	14.94
	Lyons	Keen				
		Mountain	ship	6.50-7.00	5.07	11.57-12.07
	McMaster	Olga	ship	-	-	12.02
			ship	-	-	13.03
	Purity	Olga	ship	7.80	5.07	12.87
Stoker	Lyons	Col. Jack-				
		horn	ship	6.40	4.57	10.97
	McMaster	Cavalier	ship	-	-	11.85
		Patsy	ship	-	-	11.17
			rail	-	-	10.92
		Island				
		Creek	rail	-	-	9.52
		St. Bernard	ship	-	-	8.28
		St. Bernard	rail	-	-	7.15
	Purity	Cavalier	ship	7.70	4.90	12.60
Soft Lump	Lyons	Red Jacket	ship	5.25	4.90	10.15
	McMaster	Century	local	-	-	11.00-11.40
	Purity	Century	local	-	-	11.55-11.95
Coke	Lyons	Nut	local	18.50	1.80	20.30
		Pea	local	11.00	1.80	12.80
		Breeze	local	8.00	1.80	9.80
	McMaster	Nut	local	18.50	-	-
		Pea	local	11.00	-	-
	Purity	Nut	local	18.50	.80	19.30
		Pea	local	11.00	.80	11.80

TABLE II (Cont'd.)

<u>1956</u>				Cost of Coal \$	Expenses \$	Laid-down Cost \$
Anthracite	McMaster	D. & H., Stove and Nut	ship	-	-	17.09-17.45
		D. & H., Rice	ship	-	-	13.90
		D. & H., Rice	rail	-	-	16.49
Pocahontas	Lyons	Keen Mountain	ship	6.65	5.32	11.97
	McMaster	Olga	ship	-	-	13.22-13.69
	Purity	Olga	ship	7.95	5.32	13.27
Stoker	Lyons	Col. Jack- horn	ship	6.80	5.10	11.90
	McMaster	Cavalier	ship	-	-	13.32
		Pioneer Island Creek	ship	-	-	10.70
		Cavalier	ship	7.80	5.15	12.95
	Purity					
Soft Lump	Lyons		local	-	-	12.60
	McMaster	Century	local	-	-	11.40-12.55
	Purity	Century	local	-	-	11.95-13.10
Coke	Lyons	Nut	local	18.50	1.80	20.30
		Pea	local	11.00	1.80	12.80
		Breeze	local	8.00	1.80	9.80
	McMaster	Nut	local	18.50	-	-
		Pea	local	11.00	-	-
	Purity	Nut	local	18.50	.80	19.30
		Pea	local	11.00	.80	11.80

TABLE II (Cont'd.)

1957				Cost of		Laid - down
				Coal	Expenses	Cost
				\$	\$	\$
Anthracite	McMaster	D. & H., Stove and Nut	ship	-	-	18.52
			rail	-	-	25.72
		Rice	ship	-	-	14.29
			rail	-	-	14.44
Pocahontas	Lyons	Keen				
		Mountain	ship	7.15	5.40	12.55
	McMaster	Olga	ship	-	-	14.02
	Purity	Olga	ship	8.60	5.39	13.99
Stoker	Lyons	Col. Jack-				
		horn	ship	7.25	5.22	12.47
	McMaster	Patsy	ship	-	-	12.63
		St. Bernard	ship	-	-	9.59
	Purity	Cavalier	ship	8.25	5.22	13.47
Soft Lump	Lyons		local	-	-	12.60
	McMaster	Century	local	-	-	12.55
	Purity	Century	local	-	-	13.10-13.15
Coke	Lyons	Nut	local	18.50	1.80	20.30
		Pea	local	11.00	1.80	12.80
		Breeze	local	8.00	1.80	9.80
	McMaster	Nut	local	18.50	-	-
		Pea	local	11.00	-	-
	Purity	Nut	local	18.50	.80	19.30
		Pea	local	11.00	.80	11.80

TABLE II (Cont'd.)

1958				Cost of		Laid-down
				Coal	Expenses	Cost
				\$	\$	\$
Anthracite	McMaster	D. & H.	ship	-	-	17.68
Pocahontas	Lyons	Keen				
		Mountain	ship	7.15	5.40	12.55
	McMaster	Olga	ship	-	-	14.03
	Purity	Olga	ship	8.85	5.18	14.03
Stoker	Lyons	Col. Jack-				
		horn	ship	7.05	5.01	12.06
	McMaster	Cavalier	ship	-	-	13.01
		Patsy	ship	-	-	12.36
		Kona	ship	-	-	10.91
	Purity	Cavalier	ship	8.00	5.01	13.01
Soft Lump	Lyons		local	-	-	12.60
	McMaster	Century	local	-	-	12.60
	Purity	Century	local	-	-	13.15
Coke	Lyons	Nut	local	18.50	1.80	20.30
		Pea	local	11.00	1.80	12.80
		Breeze	local	8.00	1.80	9.80
	McMaster	Nut	local	18.50	-	-
		Pea	local	11.00	-	-
	Purity	Nut	local	18.50	.80	19.30
		Pea	local	11.00	.80	11.80

Source: Returns of Information

In the above table there are six instances in which the same type and grade of coal was transported to Sault Ste. Marie in a given year by both ship and rail. In four of these instances the cost of shipping in by rail was higher than that of shipping in by boat, but it is notable that in two cases the reverse was true. The four cases where the cost of boat-hauled coal was lower are as follows:

In 1954

McMaster's anthracite
Purity's Olga

In 1956

McMaster's anthracite, D. & H., Rice

In 1957

McMaster's anthracite, D. & H., Rice

The two instances in which rail-hauled coal cost less on a laid-down basis both occurred in 1955, namely, McMaster's Patsy stoker coal and McMaster's St. Bernard stoker coal.

The dominance of American coal in the Sault Ste. Marie market was due to the respective prices and freight rates for American and Canadian coals.

From Serial 157, which is a letter from the Empire-Hanna Coal division of the M. A. Hanna Company, Toronto, to Mr. J. H. McMaster of District Services Limited, May 14, 1953, it is possible to reconstruct the cost of laying down coal in Sault Ste. Marie. These costs are shown in American dollars.

	(1)	(2)
	<u>Cavalier</u>	<u>Olga</u>
Price (f.o.b. mine)	\$ 7.30	\$ 7.55
Freight to lake	3.3175	3.4875
Vessel rate to Soo	1.08	1.08
Duty	<u>.50</u>	<u>.50</u>
Total	\$ 12.1975	\$ 12.6175

(1) Cavalier Large Treated Stoker.

(2) Olga Stove.

From Serials 38 and 39, which are invoices of the Empire-Hanna Coal Division to Lyons Fuel, Hardware and Supplies Limited dated June 25, 1956, it is possible to put together a fairly accurate analysis of the costs involved in landing American coal in Sault Ste. Marie at this later date. Two types of coal are involved, namely, Keen Mountain stove and Gold Nugget treated stoker. The costs of these were as follows:

Keen Mountain Stove	
Price (f.o.b. mine)	\$6.65
Freight and loading	3.58
Vessel freight	1.19
Gold Nugget Treated Stoker	
Price (f.o.b. mine)	\$6.80
Freight and Loading	3.41
Vessel freight	1.19

To these amounts should be added 50 cents per ton for duty. Thus, the laid-down cost of Keen Mountain stove appears to have been \$11.92, of which \$5.27 was composed of freights (rail and vessel), loading, and duty; and of Gold Nugget treated stoker, \$11.90, of which \$5.10 was composed of freights (rail and vessel) and duty. These figures may be compared with the figures for 1956 in Table II quoted above for Pocahontas Keen Mountain and Lyons Col. Jackhorn, for which coals laid-down prices of \$11.97 and \$11.90 are shown. The latter price is, of course, identical with the prices calculated from Serials 38 and 39, whereas the former differs by 5 cents from that calculated from Serials 38 and 39 for Keen Mountain stove. It is possible that this difference may be attributable to the sums shown in Serial 39 for insurance amounting to \$7.13 and \$4.17, respectively.

The following evidence shows that Canadian coal was not competitive:

"Q. Do you buy any Canada coal at all?

A. No, I have not for quite some time. We used to buy some western.

Q. Is it more economical to buy American Coal?

A. Yes."

(Evidence, p. 71)

With respect to coal from the Maritime Provinces the following comment from a study prepared for the Royal Commission on Canada's Economic Prospects is significant:

"DOSCO, which must haul its coal almost 1,000 miles to reach the most eastern end of this area, finds that with the maximum subvention it can barely compete with American coal as far as the Ottawa Valley. Virtually no coal at all is sold further west." ⁽¹⁾

The Sault Ste. Marie market would appear to have offered little opportunity for coal from across the Atlantic Ocean to compete with imported American coal. Information as to prices of British anthracite, for example, obtained in the inquiry shows that the laid-down prices at Sault Ste. Marie would have been considerably higher than the prices of American anthracite.

The three retail coal dealers in Sault Ste. Marie did not experience any competition from coal dealers in Sault Ste. Marie, Michigan. Mr. McMaster gave the following evidence:

"Q. Do you have any competition at the retail level from coal dealers in the Soo-Michigan?

A. Well, anybody can quote for the armouries. I think the school board sends out tenders to suppliers in Toronto. Anybody can buy a carload of coal.

Q. But I was wondering if in your experience you found you had competition from retail dealers in the Soo-Michigan?

A. No, I cannot say I ever have. I do not think they could come over here with the ferry rates and one thing and another. It would not allow them to come over. . . ."

(Evidence, p. 71)

Similar testimony was given by Mr. Downey (Evidence, p. 43) and by R. H. Beaumont (Evidence, p. 107).

(1) Urwick, Currie Limited, The Nova Scotia Coal Industry, June, 1956, A Study Prepared for the Royal Commission on Canada's Economic Prospects, p. 11.

3. Limitations on Dock Space

Another very significant aspect of the fuel situation in Sault Ste. Marie was, at the time of this inquiry, the limitations on dock space available for the stocking of coal brought in by lake freighter. It has been shown in previous paragraphs that, generally speaking, the cheaper method of bringing coal to Sault Ste. Marie was to bring it in by boat. This necessarily meant that the coal supply for the heating season had to be brought in during the months when navigation on the Great Lakes was possible. In other words, after the close of navigation late in the calendar year no further coal could be brought in by boat and, if any further coal were to be brought into Sault Ste. Marie it would have to come in by rail, bearing the higher costs which generally attended such an operation. This being the case, the amount of dock space available for the stockpiling of coal would affect the amount of coal which could be brought in at the lower laid-down costs characteristic of the boat-hauled imports, and therefore the ability of the individual firm to compete effectively in the coal business in Sault Ste. Marie. The situation had the further implication that, since the bringing in of large quantities of coal and its storage on the docks through the heating season would require considerable quantities of money to finance the operation, only firms having considerable financial resources, or able to borrow considerable amounts of money, would be able to enter the coal business.

Mr. W. J. Downey, formerly of Mutual, testified as follows:

"BY MR. MacLEOD:

- Q. Do you require much dock space to operate a retail coal business in Sault Ste. Marie?
- A. Yes, you would have to have 300 feet or 400 or 500 feet at least, to have two or three different piles.
- Q. What dock facilities are actually available in Sault Ste. Marie?
- A. None that I know of.
- Q. None apart from those being used by the present coal dealers?
- A. That is right.
- Q. By whom are those facilities owned, do you know?

- A. McMaster Fuels.
- Q. McMaster Fuels own certain dock facilities?
- A. And the brewery. That is the only two. Lyons is leasing now I understand from the brewery or Century Coal and McMaster is leasing space from them now.
- Q. Does the Algoma Steel Company have any dock facilities available?
- A. For their own use.
- Q. None to lease out?
- A. No.
- Q. Are there any other firms besides those you have named which would have facilities that could be leased?
- A. Not that I know of.
- Q. In your opinion would the fact be this, with the limited dock facilities available it would mean that somebody else could not get into the coal business now if they wanted to?
- A. I do not know how you would get in this city.
- Q. That is, you would have no place to store your coal?
- A. You would have no place to store it and you cannot bring it in by railroad into the Soo and compete with boat deliveries.
- Q. Did you ever try to lease any facilities since you left Mutual Coal and Dock Company?
- A. I was trying a few months before I left down there to make an arrangement about getting space from Century Coal Company.
- Q. And you found it was not available?
- A. McMaster had taken a lease on it.

BY THE CHAIRMAN:

- Q. Is McMaster using that space, do you know?
- A. Yes, he is. I understand he has taken all the coal off the dock where I was and moved it over there to make space for more oil tanks.
- Q. There might be one further question. Is there any space where additional dock facilities could be built?
- A. I do not believe so.
- Q. Is all the possible dock frontage already been built on?
- A. We have river frontage but it is away below the Soo or west of the Soo. I understand that you would have to go into building a complete new dock with your dredging which would be too expensive."

(Evidence, pp. 38-39)

The evidence of other witnesses in August, 1959 was to like effect. It was mentioned that the Algoma Central Railway had dock space which had been used for coal at one time but apparently at that time its availability had not been inquired into.

Mr. Coulter of Purity gave the following evidence as to the consideration which was given to the amount of dock space in the operations of the coal dealers:

"BY MR. MURPHY:

. . .

- Q. . . . With relation to the supply of coal in Sault Ste. Marie as a whole, you stated that except on one or two occasions the dock space in Sault Ste. Marie was adequate to take care of the heating needs of Sault Ste. Marie as a whole?
- A. I think if all parties are very conscientious and careful of what they are doing; in other words, if we can feel, for example -- we would like to fill all our separate schools in September before our coal comes in, but if they said all of a sudden, 'No, we want it spread out over the period, ' we would be out in the

market buying coal before spring. They may take 1,000 tons off our dock at that time to load up these schools, and if we have not the space to put it in we cannot bring in a part cargo and might have to bring in 2,000 tons of stoker at a time. If we had 1,000 tons sitting on the dock we would have it running into the water. We just would not have the space so that consequently we would be faced with holding 1,000 tons to last us all year and we would have railed a whole lot in.

- Q. Assuming that the dealers do treat the coal reasonably and carefully and the customers are not too demanding, the dock space then would be adequate for the whole city, the existing dock space?
- A. Yes; I would say to the best of my knowledge it would be close to it.
- Q. Has any one dealer got sufficient dock space to take care of the institutional orders or contracts and also to take care of its individual domestic trade?
- A. No, I would not say so because I do not think any one dealer could stock all the various types of coal that he would be required to handle."

(Evidence, pp. 148-49)

Between the time of the taking of evidence in August, 1959 and the hearing before the Commission in February, 1960 the question of the availability of the dock space of the Algoma Central Railway had been looked into by Lyons and Mr. Beaumont of that company gave the following evidence to the Commission:

"BY MR. NOBLE:

- Q. What position do you occupy in respect to Lyons Fuels, Hardware and Supplies Limited?
- A. I am the President of the Company.
- Q. When did you become President of Lyons?
- A. On or about November 15th, 1958.
- Q. And at that time what dock facilities were available to Lyons?

A. The Company leased dock space from the Soo Falls Brewing Company.

Q. Since that time has the Company acquired other dock facilities?

A. Yes.

Q. Are these in addition to or alternative to the original facilities?

A. Alternative.

Q. Do you know what the capacity of the original facilities was?

A. The capacity of the facilities available to Lyons was something between 6,000 and 7,000 tons, based on the fact that they only had two piles of coal.

Q. What relevance is [has] the fact that only two piles of coal could be stored there? Would that limit the Company in any way?

A. Yes, it would.

Q. How?

A. The more piles of coal that one is able to store, the greater the variety of the product that is for sale to meet different requirements of customers.

Q. From whom was the new dock space acquired?

A. The Algoma Central Railway.

Q. What is the capacity of the new dock space?

A. There is space available to the extent of some 15,000 to 18,000 tons.

Q. Do you know how many piles of coal can be stocked in this space?

A. I do not know that, but I do know that we now have five piles of coal, five different types of coal in those piles which are brought by boat, plus the storage for coke which is purchased locally from the Algoma Steel Corporation.

- Q. When, approximately, was the new dock space acquired?
- A. The arrangements were completed on September 11, 1959.
- Q. Do you know whether or not the Company actively went after this dock space or whether it was offered to the Company?
- A. I do not quite know how to answer that. Do you mean did we go after it or did Algoma Central Railway offer it to us?
- Q. Yes.
- A. No, we went after it."

(Hearing, pp. 65-67)

From the foregoing evidence, it can be concluded that, whereas the physical availability of dock space in Sault Ste. Marie may have been limited, it was not as narrowly limited for coal handling as the earlier evidence had indicated. McMaster, apparently, some time early in 1958 had leased additional dock space from the Century Coal Company and, as stated in the evidence of Mr. Beaumont quoted above, in September, 1959 Lyons had been successful in leasing a considerable amount of dock space from the Algoma Central Railway.

4. Inter-Dealer Sales of Coal and Coke

Mention has already been made of the practice of one dealer buying coal from another when he did not have a particular type of coal or had insufficient supplies for the season's requirements.

This sort of thing is exemplified by the situation in the spring of 1959 when McMaster was short of Pocahontas coal and purchased from Purity. Mr. McMaster gave the following evidence:

"BY MR. MacLEOD:

. . .

- A. . . . This spring for actually two months I have been buying all my Pokey from Purity Ice. I could

not handle my domestic trade if I did not have Pokey. That is a domestic coal. So I had to buy from Purity Ice. I buy all my coke from Lyons because I do not have any rail into my dock.

Q. In that case why would not you bring a boatload of Pocahontas coal in?

A. I cannot get a boat in in February.

Q. I thought this was around April or May?

A. Oh, no, around February or March.

Q. Have you brought in some Pocahontas since the opening of navigation?

A. I ordered a boat and they got it up as quick as they could. I got a boat in about a month ago, or a month and a half ago."

(Evidence, p. 74)

This matter is also dealt with by the evidence of Mr. Coulter of Purity:

"A. . . . I don't think anybody had sufficient dock space in the city. We [i.e., the several dealers] all invariably brought in coal late in the fall and quite often in the spring. As a matter of fact, we quite often purchased coal from each other and usually do every spring until such time as the boats are coming in. Even with the boats coming in, quite often you might have a three-compartment boat where maybe we [i.e., Purity] only wanted one compartment at this time. So naturally Lyons or McMaster or probably the coal companies across in Soo, Michigan, would contract at that time for the balance of the cargo. Of necessity it had to be that way because we had to have this coal in. We were very limited as to space. We could not take a complete cargo and we never have."

(Evidence, p. 131)

"BY MR. MacLEOD:

. . .

- A. . . . For example, McMaster I suppose has been buying Pocahontas from us for the last couple of months until he brings some in.
- Q. When did he start buying it?
- A. I would think about April of this year, March possibly.
- Q. When could he have brought it in? When does navigation open?
- A. Navigation was late this year. I do not think he could have brought a cargo in much before the first of May with any assurance of getting it. You see the self-unloaders are quite occupied with moving granite or aggregates of various sorts around the lakes at that time. We just have to fit in when we can get a self-unloader because none of us have facilities for unloading coal."

(Evidence, pp. 133-34)

At some time prior to the period of the inquiry coal was borrowed and returned by the dealers when the dealer who borrowed obtained a new supply, but the practice in recent years has been for the dealers to sell to each other (Evidence, p. 133). A possible reason for the abandonment of the loan arrangement was advanced by Mr. C. T. Murphy, counsel for Purity as follows:

" . . . I feel, as Mr. Bennett does, that the loan arrangement is evidence that there was another arrangement before and loaning in the coal business is not the same as loaning in many other types of business. If I borrow 500 tons of Pocahontas coal from my learned friend Mr. Bennett at the height of the heating season and replay [repay] him at the end of the heating season when he has to have it sit on his dock for the summer months, using an extreme example, obviously Mr. Bennett is not in the same position, despite the fact that I have repaid him in coal, particularly in the case of soft coal when there is degradation if it sits for a long time."

(Hearing, p. 39)

From the returns of information data were obtained on the purchases and sales of coal and coke between the three retail coal

dealers. The information obtained is summarized in the following table which shows each type of coal, its selling price, and where available, the quantity sold. This information is not complete, particularly as to quantity.

TABLE III
INTER-DEALER SALES OF COAL

Name of buyer	Type of coal purchased	Tons	Name of seller and price per ton			
			Lyons \$	McMaster \$	Mutual \$	Purity \$
1954						
McMaster	Pocahontas, Slack	1,033	-	-	9.00	-
	Pocahontas, Slack	106	10.50	-	-	-
	Coke, Nut	198	22.50	-	-	-
	Coke, Pea	214	15.00	-	-	-
Mutual	Anthracite	-	-	23.75	-	-
	Pocahontas, Stove	-	-	19.75	-	-
	Pocahontas, Pile Run	-	-	15.75	-	-
	Prepared Stoker	-	-	15.25	-	-
Purity	Pocahontas, Stove	-	-	20.00	-	-
	Pocahontas, Slack	-	-	10.00*	-	-
		-	-	10.50**	-	-
	Pocahontas, Slack	-	10.50	-	-	-

* to May 20, 1954

** after May 20, 1954

<u>1955</u>						
Lyons	Anthracite	-	-	21.50	-	-
	Prepared Stoker	-	-	15.50	-	-
McMaster	Pocahontas, Stove	10	-	-	20.25	-
	Pocahontas, Pile Run	7	-	-	16.25	-
	Pocahontas, Slack	198	-	-	8.25	-
	Stoker	42	-	-	-	16.50
Mutual	Anthracite	-	-	22.00	-	-
	Pocahontas, Slack	-	-	8.25	-	-
	Stoker, Kent	-	-	10.35	-	-
	Stoker, St. Bernard	-	-	10.96	-	-
Purity	Pocahontas, Slack	-	10.50	-	-	-
	Stoker, Prepared	-	-	15.50	-	-
	Stoker, Industrial	-	-	10.35	-	-

Name of buyer	Type of coal purchased	Tons	Name of seller and price per ton			
			Lyons \$	McMaster \$	Mutual \$	Purity \$
<u>1956</u>						
Lyons	Anthracite	2,488	-	22.00	-	-
McMaster	Pocahontas, Stove	7	-	-	20.25	-
	Pocahontas, Stove	81	20.00	-	-	-
	Pocahontas, Pile Run	7	-	-	16.25	-
	Pocahontas, Slack	21	10.00	-	-	-
	Pocahontas, Slack	1,659	-	-	8.75	-
	Coke, Nut	1	22.50	-	-	-
	Coke, Pea	5	15.00	-	-	-
Mutual	Anthracite	-	-	22.00	-	-
	Pocahontas, Stove	-	-	18.25	-	-
	Pocahontas, Pile Run	-	-	17.50	-	-
	Pocahontas, Slack	-	-	9.25	-	-
	Stoker, Industrial	-	-	16.00	-	-
	Coke, Nut	-	-	22.25	-	-
Purity	Stoker, Prepared	-	-	15.50	-	-
	Stoker, Industrial	-	-	10.35	-	-
<hr/>						
<u>1957</u>						
Lyons	Anthracite	2,008	-	22.00	-	-
McMaster	Pocahontas, Stove	65	-	-	-	22.50
	Pocahontas, Slack	68	10.00	-	-	-
	Stoker, Crown Royal	602	-	-	16.00	-
	Coke, Nut	17	22.50	-	-	-
	Coke, Pen	16	15.00	-	-	-
Mutual	Anthracite	-	-	22.00	-	-
	Pocahontas, Stove	-	-	18.25	-	-
	Pocahontas, Pile Run	-	-	17.50	-	-
<hr/>						
<u>1958</u>						
Lyons	Anthracite	1,590	-	23.60	-	-
McMaster	Pocahontas, Slack	53	10.00	-	-	-
	Stoker	34	-	-	-	16.00
	Stoker, Crown Royal	258	-	-	13.00	-
	Stoker	1,015	11.60	-	-	-
	Stoker, Commercial	231	9.60	-	-	-
	Coke, Nut	73	22.50	-	-	-
	Coke, Pea	34	15.00	-	-	-
	Anthracite	-	-	23.60	-	-
Mutual	Pocahontas, Stove	-	-	18.75	-	-
	Pocahontas, Slack	-	-	8.75	-	-

The foregoing table shows, in so far as the incomplete data can be relied on, that the chief kind of coal sold between the dealers in the years 1956, 1957 and 1958 was anthracite coal, and in 1954 and 1955 Pocahontas slack. In 1957 and 1958 stoker coal was second in importance only to anthracite in inter-dealer sales.

Mr. McMaster said that in supplying coal to other dealers from his stocks he sold the coal at the laid-down cost, plus handling in the yard and overhead or what he described as his "full cost" (Evidence, p. 80).

Mr. J. M. Coulter of Purity, questioned about the method of setting prices on inter-dealer transactions in coal, testified as follows:

"BY THE CHAIRMAN:

Q. There was one point I was not quite clear about arising out of a question that Mr. MacLeod asked and your answer. You spoke of selling coal this year to McMaster. I think it was 200 tons of Pocahontas, or something like that?

A. Yes.

Q. You said you had sold it to him at a price considerably below the price at which you might have sold it to a regular customer?

A. That is right.

Q. How do you determine that price?

A. It is a matter of negotiation each time you go to buy it or we buy from him.

Q. You negotiate it with ---

A. With the individual.

Q. In each case. Do you happen to know how the price at which you sold it to McMaster this year compares with the price which he would have been paying had he brought it in from the United States?

A. I would think it would cost him approximately \$2 a ton more.

Q. To buy?

A. From us.

. . .

Q. The price at which you sell to McMaster, at which you have been selling during these past few months results from negotiations and in those negotiations I take it you try to allow at least for the costs which you have incurred in connection with that coal?

A. That is right.

Q. You try to cover all your costs?

A. We try to cover all our costs, plus a little edge just to make sure we do. We are not in the business of giving coal away to anybody and we certainly do not expect we are going to."

(Evidence, pp. 143-44)

"BY MR. MURPHY:

. . .

Q. . . . When you sell, say to McMaster who had the contracts during last year or the last year on record. I take it that that sale is made at a cost less than what McMaster charges the purchasers?

A. I assume so. He has to make his charges and his profit on it.

Q. It is also sold to him at a price less than that which you could obtain if you sold it domestically?

A. That is right."

(Evidence, p. 148)

5. Relation of Limited Dock Space to Dealers'
Ability to Tender

One of the results of the limited amount and restricted variety of coals which could be stocked by the dealers on their available dock space was that their ability to tender was limited in large measure to the varieties normally stocked. Particular customers wanted coals which would give satisfactory results in the types of heating system with which they were equipped and drafted their specifications accordingly. At times, however, customers were not able to obtain from any of the three coal dealers the exact quality of coal they had specified. The effect of the limitation of dock space upon ability to tender has been shown in the evidence of Mr. R. H. Beaumont previously cited when he said that the more piles of coal a dealer could place on his dock the greater variety of product he would have for sale to meet different requirements of customers (hearing, p. 66). Mr. Coulter also testified:

"BY MR. MacLEOD:

. . .

- Q. Do you find that large industrial users such as the dominion government, the Provincial Air Service and places like that lay down specifications for the coal that they usually purchase?
- A. Yes. They have asked for specifications on the coal we were offering. In other words, if they ask for tenders and we do not have the specified coal they are asking for, we would submit a tender anyway and send specifications of our own coal which may be superior, or at least we think would be superior to the type of coal they were asking for."

(Evidence, p. 138)

When unable to meet specifications exactly a dealer might omit tendering at all, or might submit a tender on a type of coal or a mixture of coals which he believed would be acceptable.

An example of this is shown in Serials 216-19 inclusive. The Board of Education, Sault Ste. Marie called tenders for 1,000 tons of prepared stoker coal and 1,000 tons of Pocahontas slack stoker coal for the school year 1954-55. In response to this request to tender, McMaster replied:

" . . .

Due to our inability to handle a cheaper grade perhaps than you are now using owing to our dock space, we are desirous of quoting on 1000 tons of Patsy Oil Treated 1" x 1/4" American Bituminous Stoker Coal at a price of \$18.50 per ton and a price of \$12.00 a ton on 1000 tons of Olga Pocahontas slack, these coals having the following analyses:

	<u>Patsy Oil Treated 1 x 1/4</u>		<u>Olga Pocahontas Slack</u>
	<u>As Received</u>	<u>Dry</u>	<u>As Received</u>
Moisture	3.65	-	1.32
Volatile	39.47	40.97	15.53
Carbon	52.24	56.29	75.28
Ash	2.64	2.74	7.87
Sulphur	.77	.80	.48
B. T. U.	13869	14394	14284
Fusion	2460		2350

We would greatly appreciate having you give this tender your consideration covering the whole or any portion of same and we, in turn, will guarantee this coal to be one of the finest coals that you have yet used for school heating.

. . . "

(Serial 218)

Serial 216 indicates the acceptance of this tender by the Board of Education, and says, among other things:

"It is assumed that where we would require a mixture of this coal, it would be at \$15.25 per ton. Some of our schools use a mixture, and for this reason the above is specified."

In those cases where a dealer offered a mixture of available coals in an attempt to approximate the type of coal the customer wanted, a typical mixture would be that of high-grade stoker with slack. The significant point is that in some cases the dealers were unable, for the reasons outlined, to offer comparable coal in response to requests for tenders. When requests were received for tenders on coal other than the regular kinds stocked by all dealers

McMaster was in the best position because of the wider variety of stoker coals which it regularly stocked.

6. Penetration of Fuel Oil into Sault Ste.
Marie Market

Another matter of some interest in assessing the Sault Ste. Marie market for coal is the competition of such fuel oil as may be used for domestic or commercial heating purposes. According to the evidence of Mr. McMaster the use of fuel oil as a fuel was chiefly apparent in new houses:

"BY MR. MacLEOD:

. . .

Q. Do you find that oil is cutting into the demand for coal in Sault Ste. Marie?

A. Yes, it is cutting in, but actually it is the new building that is increasing with oil. However, we sold more coal last year than we did in 1953.

Q. So that the older buildings that were originally equipped with coal furnaces are keeping them?

A. I would not say there is a tremendous change-over in the domestic end. The new homes are all oil practically, but in the old homes a lot of people are buying coal. They are good customers. In the west end there is a large foreign element and they do not worry about throwing in a shovel full of coal or taking out the ashes. We have quite a foreign element here."

(Evidence, p. 75)

Again, there is the evidence of J. H. McMaster:

"BY MR. MacLEOD:

. . .

Q. The only point I was interested in was that the profit seemed to run at relatively the same rate for oil and for coal.

- A. Yes, and our sales are practically the same too.
- Q. The sales were roughly the same and the profit was as shown, that is about the same?
- A. That is right.
- Q. Is that your experience, that coal does return you about the same profit as your oil operations?
- A. Well, that is the way it has been. I have not been in the oil in a big manner. I only started in 1956, of course, and I am just getting into a good volume now, but to be honest I think oil is going to exceed my coal. I hope so, anyway."

(Evidence, pp. 85-86)

The evidence of Mr. Downey was somewhat to the same effect:

- "Q. What about the use of oil for domestic heating in houses; is it widely used here?
- A. Yes, it is very much so in this town. All the new homes that are going up are oil.
- Q. So that oil takes a large share of the domestic market?
- A. The domestic.
- Q. What about the large industrial users, do they use oil?
- A. Very few.
- Q. By industrial I am including government buildings and that sort of thing.
- A. A few of the government buildings, the labs; some of the provincial labs are using oil and some of the larger churches have converted in the last few years.
- Q. I believe the hospital converted to sawdust.
- A. They are using sawdust.

BY THE CHAIRMAN:

Q. What about natural gas?

A. We have not any.

Q. Any prospects?

A. There have been rumours but they would have to back up from Sudbury 200 miles."

(Evidence, pp. 45-46)

Mr. R. H. Beaumont of Lyons gave the following evidence:

"BY MR. MacLEOD:

. . .

Q. Can you tell me if fuel oil has cut into the coal business of the Lyons firm?

A. Yes, it has.

Q. Do you find that your coal business is down compared to what it was in previous years?

A. Yes, it is."

(Evidence, pp. 116-17)

Mr. J. M. Coulter of Purity also said that sales of coal had been affected by the greater use of fuel oil:

"BY MR. MacLEOD:

Q. Have you found your sales affected in recent years by the use of oil?

A. Yes, principally this last year we have noticed quite a decline. Commercial establishments have put oil burning facilities in. The separate schools, the new additions and so on, have put in oil."

(Evidence, p. 139)

Mr. Coulter said that whereas the Soo Falls Brewing Company Limited had formerly had two coal-fired boilers the company now has one oil-fired boiler and the consumption of coal decreased from 1,000 or 1,100 tons to 700 or 800 tons a year (Evidence, p. 145).

In the information submitted to the Director by Mr. R.H. Smith, Business Administrator of the Board of Education, on tenders to the Board of Education there occurs the following paragraph:

"The increase in price per ton from 1955-56 up to date has been explained as due almost entirely to an increase in shipping by water. In 1955 the accepted price per ton was \$14.25 for stoker coal; in 1956 it went up to \$14.85; in 1957 to \$15.10 and in 1958 to \$15.40 and in 1959 to \$15.90 a ton. This fluctuation in coal prices over a seven-year period has had some influence on our decision to convert several of our schools to oil."

The foregoing evidence suggests that while fuel oil is being used as the fuel to an increasing extent in new buildings and new installations coal is continuing to be used in older buildings and in equipment for which it is appropriate.

CHAPTER III

POLICIES OF DEALERS AS TO SELLING PRICES AND TENDERS

1. Evidence as to Common Selling Prices

As noted in the previous chapter, all three dealers carried certain basic types of coal, which are comparable in quality, if not of exactly the same quality. In the returns of information the dealers furnished particulars as to the selling prices of coal and coke in each year. In some cases changes in prices were made during the heating season but full information was not always available as to the exact date on which a change in price was made.

Apart from supplying coal to the parent company, Soo Falls Brewing Company Limited, Purity deals primarily with commercial accounts rather than with domestic users (Evidence, p. 125) and its domestic business is very small (Evidence, p. 138). Purity is a separate school supporter and has been an exclusive supplier of coal to the separate schools (Evidence, p. 146). According to an analysis made by the Director of Investigation and Research, Purity's prices to the separate schools have been as low or lower than those of the other dealers to the public schools for comparable types of coal.

In the return of information made by Purity a price list was not included for each year but prices to different classes of customers were shown. For most types of coal, in most years, a "general" price was shown in the return and where this has been given it has been used in preparing the following table which lists selling prices of comparable types of coal for the three dealers.

TABLE IV

DEALERS' SELLING PRICES OF COMPARABLE TYPES
OF COAL

		<u>Lyons</u> \$	<u>McMaster</u> \$	<u>Purity</u> %
Anthracite (Nut and Pea)	1954	26.00	26.00	
	1955	26.00	26.00	
	1956		26.00	
		26.50	26.50 (May)	
	1957		26.50	
			28.00 (Sept.)	
	1958	28.00	28.00	
<hr/>				
Coke, Nut	1954	25.50	25.50	25.50
	1955	25.50	25.50	25.50
	1956	25.50	25.50	25.50
	1957	25.50	25.50	25.50
	1958	25.50	25.50	25.50
<hr/>				
Coke, Pea	1954	19.00	19.00	19.00
	1955	19.00	19.00	19.00
	1956	19.00	19.00	19.00
	1957	19.00	19.00	19.00
	1958	19.00	19.00	19.00
<hr/>				
Bituminous, Soft Lump	1954	17.00	17.00	17.00
	1955	17.00	17.00	17.00
	1956		17.00	17.00
		18.00	18.00 (May)	
	1957	18.00	18.00	
			18.50 (Sept.)	18.50 (Dec.)
	1958	18.50	18.50	18.50
<hr/>				

TABLE IV (Cont'd.)

		<u>Lyons</u> \$	<u>McMaster</u> \$	<u>Purity</u> \$
Pocahontas, Stove	1954	23.00	23.00	23.00
	1955	23.00	23.00	23.00
				24.00 (Oct.)
	1956	24.50	24.00	24.00
		25.00	24.50 (Nov.)	24.50 (Nov.)
	1957		24.50	
		25.00	25.00 (Sept.)	25.00 (July)
	1958	25.00	25.00	25.00
<hr/>				
Stoker, Regular Grade	1954	18.50	18.50	18.00 ⁽¹⁾
	1955	18.75	18.75	18.50 ⁽²⁾
	1956	18.75	18.75	(3)
	1957	18.75	18.75	19.00
			19.00 (Sept.)	
	1958	19.00	19.00	(4)
<hr/>				

(1) Price to "Misc."

(2) Price to Oct. 3, 1955. Prices apparently increased by 25 cents per ton on Oct. 4, 1955.

(3) Price same as in 1955.

(4) Price same as in 1957.

Although the information about the dates of price changes is not complete in all cases it is clear that what may be termed the general prices of the three dealers for comparable types of coal were substantially the same at most times during the period covered by the inquiry. Variations seem to have been more evident in the case of Purity's prices but, as already noted, its household business has been very small.

There is a conflict in the oral evidence as to the manner in which selling prices of coal were established in Sault Ste. Marie. Mr. W.J. Downey, who was employed by Mutual from 1951 to 1958 gave the following evidence:

"Q. How was the price of coal in Sault Ste. Marie fixed; how was it set?

A. Well, we had a meeting every year and as I referred to the four coal dealers, after they got the mine price and the railroad from the mine to the dock -- most of our coal came from Toledo, it was loaded at Toledo, and our boat freight; they would say the coal was going to be so much, and that is what it would be."

(Evidence, p. 25)

Mr. Downey said he did not recall the exact dates of the meetings but testified that a meeting would usually be held in July or August attended by representatives of each of the four dealers. Mr. Downey also gave evidence that one price would be set for each grade of coal, regardless of quantity. His evidence contained the following:

"Q. Did Mutual Coal and Dock Company follow the prices fixed at these meetings you have told us about?

A. We did.

Q. To your knowledge did the other firms follow these prices?

A. I believe they did too."

(Evidence, pp. 27-28)

Mr. Beaumont who gave evidence about Lyons only became General Manager of that company toward the end of 1958. He said that there had been no change in selling prices since he became associated with Lyons and that there had been no discussions about selling prices with either Mr. Coulter or Mr. McMaster (Evidence, pp. 71-72).

Mr. McMaster and Mr. Coulter denied in their evidence that selling prices were set at meetings among the coal dealers in Sault Ste. Marie. Mr. McMaster's evidence included the following:

"Q. How do you find that your prices compare with those of other dealers in general, resale prices?

A. As I say, being the main one in the business, that is all I do. It is my full business. The others have other business, it is just a sideline with them. I think they just follow my prices."

(Evidence, p. 65)

Also,

"Q. Did you not have meetings in other years to discuss the price of coal in your office with the gentlemen I have named, Mr. Coulter, Mr. Lyons and Mr. Downey?

A. No sir. To set the price on coal, did you say?

Q. To discuss the price of coal.

A. No. We did it at those meetings, I mean in business way we did it. If the miners were going out for higher wages or we got notice our coal was going to be increased 60 cents a ton or that the freight rates were going up or our boat rates were going up, it would be in the general course of business that we spoke of those things.

Q. I want to be quite clear on this thing. Did you not have yearly meetings or just about every year, in your office with Mr. Downey, Mr. Coulter and Mr. Lyons?

A. No sir.

Q. Some time in July or August?

A. I do not think Coulter has ever been in my office yet. To be honest, I have with Downey because I control them, I had a controlling interest in that thing.

Q. What about Mr. Lyons?

A. Not that I know of have I ever had a meeting with Lyons on the prices of coal, never have.

Q. Have you had a meeting at which the price of coal was discussed?

A. At these meetings it might have been discussed.

Q. Where were those meetings held?

A. At Mr. Coulter's office.

Q. Were any of them held in your office at all?

A. Nothing discussed as to getting a price structure. . . ."

(Evidence pp. 62-63)

Mr. Coulter's evidence was as follows:

"Q. Have you had meetings at which the retail price of coal was discussed?

A. No sir.

Q. You have not met in McMaster's office with Lyons, Downey and McMaster?

A. Yes.

Q. And discussed the cost of coal and what the freight would be and so on?

A. I think that is possibly true. We discussed vessel rates and what the cost of coal was going to be at the mine, but the resale value price of the coal was not discussed, I am sure.

Q. Did you ever ask McMaster his resale on any particular type of coal?

A. We have through our office but I never have directly. We keep track of our competitors the same as anyone would. We call his office and ask quotations on a specific type of coal.

Q. Did you have meetings with Downey, Lyons and McMaster in McMaster's office apart from the occasions when this type of tabulation was discussed?

A. I cannot recall any.

Q. Did you have meetings with the same group in your own office apart from the occasion when these tabulations were discussed?

A. No."

(Evidence , pp. 129-30)

2. Arrangements Among Dealers Covering
Sales to Institutions

Considerable evidence, which was not disputed, was obtained in the inquiry in regard to an arrangement among the coal dealers in Sault Ste. Marie with respect to the sale of coal to designated institutions. The arrangement, which was initiated a number of years ago, applied, until 1957, to sales of coal on tender to the public schools, the Armouries and the Provincial Air Services' Aerodrome. After 1957 the arrangement also embraced sales of coal to the Court House, Gaol and the Chief Ranger's Building.

Each dealer submitted quotations to the institutions whose invitations to tender he accepted and the dealers to whom contracts were awarded supplied coal in accordance with the contract.

The arrangement among the dealers related to sharing part of the proceeds from the contracts filled. The evidence shows that at the end of each heating season the sales made by the dealers to the designated institutional accounts were totalled and a theoretical share for each dealer was calculated on the basis that each of the four dealers was entitled to an equal proportion of the business.

One important modification was made in the general arrangement with respect to Purity which, as previously mentioned, was a separate school supporter and was the exclusive supplier of coal to such schools. On the other hand, Purity did not tender on the supply of coal to public schools. The separate schools were not included in the arrangement among the dealers and Purity was not accorded a share in the public school business. With respect to the other coal accounts mentioned above, shares were calculated for all four dealers. For this reason separate calculations were made each year for sales to public schools and for sales to the other institutions included in the arrangements.

The evidence as to the basis on which the shares were worked out is summarized in the Statement of Evidence as follows:

"When the theoretical shares of each dealer had been established in the manner indicated, these were compared with actual sales to determine if each dealer had sold more or less than its share - whether it was 'over' or 'short'. Adjustments were then made on the amount each dealer was over or short. Up to and including the heating season 1955-56, a distinction was drawn between Stoker and Slack coal. On Stoker coal, a dealer which sold more than its share paid \$4.00 on each ton over its share. A dealer which sold less than its share received \$4.00 per ton for each ton less than its share. On Slack coal, dealers which sold over their share received \$2.00 per ton on the average and dealers which sold less than their share paid \$2.00 on the shortage. Thus, whether a dealer paid or received a payment depended not only on whether it secured its theoretical share of the business, but also on the type of coal which was sold. [The explanation of this appears to be that Slack coal was not imported as such but resulted from the degradation (the term which seems to be used in the industry) of Lump coal when stored. The demand for it in Sault Ste. Marie was limited and it was apparently sold at a price which yielded the dealers a much smaller return than did sales of Lump coal. It was sometimes sold in a mixture of Lump and Slack coal which was priced at a mean price between the price of Lump and Slack sold separately. In the calculations prepared up to 1955-56, the dealers referred to sharing the profit on Lump coal and the loss on Slack coal.] Beginning with the 1956-57 heating season, the basis of adjustment was changed to a straight ten per cent of selling price which was paid by dealers selling more than their share to dealers selling less than their share. One other exception to the general rules may be noted. During the heating season 1955-56, McMaster sold a low-priced Stoker coal to the Public Schools and on these sales the adjustment was \$2.00 rather than \$4.00 per ton."

Mr. McMaster testified that he had insisted on the change from a dollar rate to a percentage of the selling price as he felt that the previous basis of sharing at the rate of \$4.00 per ton on stoker coal took too large a share of profits (Evidence, p. 68).

The mechanics of handling the arrangement were simple. At the end of the heating season each dealer telephoned or sent in a report of its sales to the accounts covered by the arrangement to Mr. Coulter of Purity. Mr. Coulter tabulated the information, made the necessary calculations and furnished each dealer with a statement

showing the payments to be made or received. The payments were then handled in the ordinary course of business.

The Statement of Evidence includes details of coal sales and adjustments under the arrangement for the heating seasons 1952-53 to 1957-58, both inclusive. As these are in the same form, except that the details for 1957-58 include value but not tonnage figures, the summary for the year 1956-57, as presented in the Statement of Evidence, may be used for purposes of illustration.

TABLE V

ADJUSTMENTS AMONG DEALERS RE COAL SUPPLIED
ON TENDER

1956-57

- Notes: (1) Beginning with this heating season, the basis of settlement was changed to 10 per cent of the selling price for both Slack and Stoker coal.
- (2) It was decided that, beginning in 1957-58, the arrangements would include coal supplied to the Public Schools, Court House, Gaol, Chief Ranger's Building, Aerodrome and Armouries.

	Supplied tons	Share tons	Over or Short tons	Amount \$
<u>Slack - Public Schools</u>				
Lyons	Nil	175	175 short	
McMaster	526	176	350 over	
Mutual	Nil	175	175 short	
<u>Armouries</u>				
Lyons	Nil	56	56 short	
McMaster	224	56	168 over	
Mutual	Nil	56	56 short	
Purity	Nil	56	56 short	
<u>Summary - Slack</u>				
Lyons			231 short @ \$1.30 =	300.30(+)
McMaster			518 over @ \$1.30 =	673.40(-)
Mutual			231 short @ \$1.30 =	300.30(+)
Purity			56 short @ \$1.30 =	72.80(+)

Stoker (St. Bernard) - Public Schools)

Lyons	Nil	428	428 short @ \$1.485 =	635.58(+)
McMaster	1,284	428	856 over @ \$1.485 =	1,271.16(-)
Mutual	Nil	428	428 short @ \$1.485 =	635.58(+)

TABLE V (Cont'd.)

	<u>Supplied tons</u>	<u>Share tons</u>	<u>Over or Short tons</u>	<u>Amount \$</u>
<u>Stoker (Island Creek) - Armouries</u>				
Lyons	Nil	56	56 short @ \$1.583 =	88.65 (+)
McMaster	224	56	168 over @ \$1.583 =	265.95 (-)
Mutual	Nil	56	56 short @ \$1.583 =	88.65 (+)
Purity	Nil	56	56 short @ \$1.583 =	88.65 (+)

Stoker (Crown Royal) - Aerodrome

Lyons	Nil	162	162 short @ \$1.875 =	303.75 (+)
McMaster	Nil	162	162 short @ \$1.875 =	303.75 (+)
Mutual	648	162	486 over @ \$1.875 =	911.25 (-)
Purity	Nil	162	162 short @ \$1.875 =	303.75 (+)

Summary

	<u>Lyons \$</u>	<u>McMaster \$</u>	<u>Mutual \$</u>	<u>Purity \$</u>
Slack	300.30 short	673.40 over	300.30 short	72.80 short
Stoker:				
St. Bernard	635.58 short	1,271.16 over	635.58 short	-
Island Creek	88.65 short	265.95 over	88.65 short	88.65 short
Crown Royal	303.75 short	303.75 short	911.25 over	303.75 short
TOTALS	<u>1,328.28 (+)</u>	<u>1,906.76 (-)</u>	<u>113.28 (+)</u>	<u>465.20 (+)</u>

Witnesses were of the opinion that the arrangement regarding institutional sales covered about 10 per cent of the total market for coal in the city of Sault Ste. Marie. Mr. Coulter of Purity said in this regard:

"BY MR. MURPHY:

. . .

Q. One further point. This arrangement set out in document 308 as you have stated is with reference only to certain institutions. Can you tell me what percentage of the total coal sales of the city form part of this arrangement? In other words, what percentage do the institutions use of the total coal sales of the city?

A. I would think in the neighbourhood of 10 per cent; somewhere in that area. It may be more, it may be slightly larger than 10 per cent."

(Evidence, pp. 149-50)

A check of the estimate of 10 per cent can be made by relating the information obtained in the inquiry as to purchases of coal by dealers and sales to institutional accounts. The information is not complete for each year but it is considered sufficient to provide a basis for estimating fairly closely the proportion which sales covered by the arrangement formed of the total coal business of the four dealers. It will be recalled that the tabulation of shares under the arrangement for the heating season 1957-58 was on the basis of values only but as the prices are known for all contracts except that for the Chief Ranger's Building it is possible to derive a figure for the tonnages involved. The following table shows for each year for which information is available the proportion which sales to institutions formed of the total coal purchases of the dealers for whom such information was obtained. The purchase figures are for calendar years while the sales to institutions are for heating seasons, but as most of the coal brought in during one calendar year would be used in the heating season the difference in the two periods is not likely to affect the picture significantly. On one occasion McMaster brought in a boat-load of 5,500 tons of coal in order to supply the public schools with coal at a lower price than regular stoker coal and carried part of the shipment over until the following year (Evidence, p. 65). Such shipments, however, appear to have been the exception. On the other hand, as information for coal purchases by Mutual are not available the actual proportion which sales covered by the arrangement formed of total coal sales would be lower than shown in the table.

TABLE VI

PROPORTION WHICH SALES COVERED BY ARRANGEMENT AMONG DEALERS
FORMED OF TOTAL COAL BUSINESS IN SAULT STE. MARIE

Heating Season	Sales to Institutions			Sales to Public Schools (included in Column (4)) tons (5)	Column (5) as % of Column (4)	Total Purchases of Coal* by Dealers tons (7)	Column (4) as % of Column (7)
	Stoker tons (2)	Slack tons (3)	Total tons (4)				
(1)					(6)	(8)	
1952-53	1,955	875	2,830	1,935	68.4	N.A.	-
1953-54	2,628	871	3,499	2,671	76.3	N.A.	-
1954-55	1,981.7	800	2,781.7	1,802	64.8	32,392	8.6
1955-56	2,574	443	3,017	2,072	68.7	43,821	6.9
1956-57	2,156	750	2,906	1,810	62.3	33,813	8.6
1957-58	N.A.	N.A.	3,160**	1,963**	62.1	26,562	11.9

* Not including coke.

** Estimated.

The witnesses' estimate that the sales covered by the arrangement represented 10 per cent of the total coal business appears to have been somewhat high for the years prior to 1957-58 when the absence of figures for the coal purchases of Mutual is taken into account. Although the estimate of 10 per cent may be closer to the actual situation in 1957-58 it will be noted that the amount of business subject to the arrangement remained relatively stable whereas, as already noted, total coal purchases in the period declined substantially. It would be expected, therefore, that the proportion of business accounted for by institutional sales would increase.

3. Reasons Given by Dealers for Arrangement
Relating to Sales to Institutions

The written submissions made on behalf of the dealers, which are reviewed at the beginning of this report, contain a comprehensive summary of the reasons given by the dealers for the arrangement for sharing part of the proceeds on sales of coal to certain institutions. It will be recalled that the reasons given were related to the limitations on dock space for the storage of coal.

In this connection Mr. McMaster gave the following evidence:

"A. . . .

Hearing about this arrangement I did come down and I spent considerable time on it to see whether I was going to continue it. I did not know what it was all about and I wanted to know before I continued with it.

I might say that owing to the shortage of dock space -- I mean, I had the largest dock, in fact I am the largest coal supplier in the city, I believe maybe 70 to 80 per cent of the coal in the city. In order for me to do this, I mean to carry on the tonnage that our company was putting out, it was essential, it was necessary I was going to have to do it because I didn't have the dock to handle it.

I didn't have dock space to handle this business that we were getting.

If I had not gone for this arrangement -- this arrangement was the only feasible thing that I could think of, and of course from my point of view the only way we could make any money.

. . .

A. . . .

The whole thing here is, well the way I thought of it of course was that that is the only way that I could stay in business, keep on doing business, would be to have this same arrangement, to have an arrangement whereby it would allow me should I go out and quote on a domestic or quote on a commercial or industrial account, I would have to have some means of getting the product from somebody else in the town. There is no way of meeting a quote that you quote by boat when you bring in by [railway] cars because your coal price would be about \$3 or \$4 a ton [more] in the retail [price]. . . .

. . .

A. If I took it upon myself to quote on all these commercial accounts that come up I would not have the coal on my dock to handle them. This is actually an insurance policy, that is all it was. Instead of having our coal in one pile, it was around the different yards. In other words, it was an insurance policy for us because if this could not have happened, if we could not have done this there is nobody in town who would have the amount of coal that is needed in the town. There is no one dock that could handle the amount of coal needed in town."

(Evidence, pp. 51-54)

Also:

"BY MR. BENNETT:

. . .

Q. Can you clarify why it is that the coal dealers, even though this arrangement was in existence when you got into the business; can you tell us your understanding of why this arrangement appeared to [be] necessary or desirable because of the situation in this city in so far as dock space is concerned?

A. That is right.

Q. I know it is, but I want you to explain it.

A. Well, to be honest with you, Mr. Bennett, if right now we did not have this arrangement -- may we call it an arrangement -- if we did not have this arrangement I would not take on some of these contracts. I would not want to even quote on them.

Q. Would it be fair to put it this way?

A. For the simple reason if I did, if I quoted on those contracts and we did not have this arrangement, I would lose my domestic trade and some of the other boys would gobble it up on me.

Q. Why?

A. Because I would not have room on my dock to take care of it.

. . .

Q. Was this arrangement that you worked out among your dealers in this city worked out because of the limited dock area and was it the only possible arrangement you could work out on the basis of the dock area available?

A. Well, to be honest with you, Mr. Bennett, I was not here when this arrangement came into being, but as I told the gentlemen here today, when I came down I spent a lot of time on this arrangement and I had the authority to throw it out -- to carry on or throw it out, whichever I wished. I did see that it was very feasible and economical and the only way that we could tender and service the people we tendered on. Otherwise, instead of tendering on some of these contracts I would let them go to the devil because of holding up my domestic trade. If I took them I could not handle my domestic trade with the dock space I had.

Q. You could not be sure from one year to the next whether you were going to get the board of education order or whether you were going to get the armouries?

A. My suppliers are bidding on it.

Q. That is tendered for across Canada?

A. Yes.

Q. There were years when you did not get the board of education contract?

A. Yes, that is right."

(Evidence, pp. 91-94)

Evidence given by Mr. J.N. Coulter of Purity was along the same lines:

"BY MR. MacLEOD:

. . .

Q. . . . What was the purpose of the arrangement, why was this done?

A. Because of the limited facilities for dock space in the area. Lyons, for some reason or other in 1941 our dock was leased to Lyons, that is the major portion of it, and we were dragged down to the far end of the dock. To bid on these things we had to be assured we were going to get coal. I don't think anybody had sufficient dock space in the city. We all invariably brought in coal late in the fall and quite often in the spring. As a matter of fact, we quite often purchased coal from each other and usually do every spring until such time as the boats are coming in. Even with the boats coming in, quite often you might have a three-compartment boat where maybe we only wanted one compartment at this time. So naturally Lyons or McMaster or probably the coal companies across in Soo, Michigan, would contract at that time for the balance of the cargo. Of necessity it had to be that way because we had to have this coal in. We were very limited as to space. We could not take a complete cargo and we never have.

Q. How does that relate to this arrangement?

A. Well, if we got a contract, for example, say for 500 tons, it would mean we would not be able to supply our consumers. Therefore we had to be assured of a supply of coal and we would have to buy from somebody else, but somebody else could refuse to buy it unless we had some arrangement. If somebody else said, 'It is nice in February, thanks very much' we were out of the coal business.

Q. Did you not in fact buy and sell among the companies an awful lot of coal to which this arrangement does not relate?

A. Yes.

Q. Why is it possible to do it in that case without an arrangement and in this case you need an arrangement?

A. Well, without this arrangement I do not think we would be very tempted to sell to each other on any other basis. For example, if somebody is out of domestic coal and he wants it for a house, why should I sell it, say to McMaster? Why should not I just say to McMaster, 'Tell me who the customer is and I will deliver it to him, I will sell it to him'? So that the fellow who was going to deliver under the contracts is going to be stuck. He might get them all in one year and have say 5,000 or 6,000 tons to deliver, but what is he going to do next year if he does not get them? He is gone completely because he has lost his own domestic trade.

Q. When you say he would --

A. He would not be able to supply them. He would not have that area on his dock to look after them so by spring he would be out. Unless he could buy from the other dealers he could not supply his domestic trade and they would all swing their trade to his competitors.

Q. It seems to me you are putting it this way. You feel it is necessary as an inducement for one dealer to sell to another that the first dealer hand over part of his profit?

A. Well, it is not actually profit, it is a charge to assure him that he would have coal and be able to purchase it from the other dealers. It is a form of insurance to him that he is going to have coal available because we have always worked this coal back and forth. . . ."

(Evidence, pp. 130-33)

"BY MR. MURPHY:

. . .

- Q. . . . With relation to the supply of coal in Sault Ste. Marie as a whole, you stated that except on one or two occasions the dock space in Sault Ste. Marie was adequate to take care of the heating needs of Sault Ste. Marie as a whole ?
- A. I think if all parties are very conscientious and careful of what they are doing; in other words, if we can feel, for example -- we would like to fill all our separate schools in September before our coal comes in, but if they said all of a sudden, 'No, we want it spread out over the period,' we would be out in the market buying coal before spring. They may take 1,000 tons off our dock at that time to load up these schools, and if we have not the space to put it in we cannot bring in a part cargo and might have to bring in 2,000 tons of stoker at a time. If we had 1,000 tons sitting on the dock we would have it running into the water. We just would not have the space so that consequently we would be faced with holding 1,000 tons to last us all year and we would have railed a whole lot in.
- Q. Assuming that the dealers do treat the coal reasonably and carefully and the customers are not too demanding, the dock space then would be adequate for the whole city, the existing dock space ?
- A. Yes; I would say to the best of my knowledge it would be close to it.
- Q. Has any one dealer got sufficient dock space to take care of the institutional orders or contracts and also to take care of its individual domestic trade ?
- A. No, I would not say so because I do not think any one dealer could stock all the various types of coal that he would be required to handle.
- Q. So it would be necessary for him, in order to maintain his domestic market, to turn to the other dealers to obtain his product ?

- A. For example, as I mentioned before, with the General Hospital during the latter two or three years we supplied them before they started using sawdust. sawdust. We actually purchased St. Bernard from McMaster because we had no dock space to put it on."

(Evidence, pp. 148-49)

4. Identical Prices on Tenders to Institutional
Accounts for Comparable Types of Coal

Information as to tenders and contract prices was obtained by the Director from those customers whose coal purchases were covered by the arrangement among the dealers. While each dealer did not tender on the same brands of coal when the classes were the same, identical prices were usually quoted.

The details as to prices quoted on tenders to public schools are presented in the Statement of Evidence in the manner shown in Table VII.

TABLE VII

TENDERS TO PUBLIC SCHOOLS

	<u>District</u>	<u>Lyons</u>	<u>McMaster</u>	<u>Mutual</u>
	\$	\$	\$	\$
<u>1952</u>				
Prepared Stoker	-	-	-	18.50
Black Dog Stoker	-	18.50	-	-
Sun King Stoker	13.40*	-	-	-
Pocahontas <u>Slack</u>	-	12.00	-	-
*f.o.b. track				

TABLE VII (Cont'd.)

	<u>District</u> \$	<u>Lyons</u> \$	<u>McMaster</u> \$	<u>Mutual</u> \$
<u>1953</u>				
Brand not known	18.50	-	-	18.50
Black Dog Stoker	-	18.50	-	-
Pocahontas <u>Slack</u>	-	12.00	-	-
<hr/>				
<u>1954</u>				
Brand not known	-	18.50	-	18.50
Cavalier Stoker	-	-	18.50	-
Patsy Oil-Treated Stoker	-	-	18.50	-
Olga Pocahontas <u>Slack</u>	-	-	12.00	-
<hr/>				
<u>1955</u>				
Colonel Jackhorn Stoker	-	18.00	-	-
Cavalier Stoker	-	-	18.00	-
Crown Royal Stoker	-	-	-	18.00
Bounty Stoker	-	14.25	-	-
St. Bernard Stoker	-	-	14.25	-
Prepared Mix	-	-	-	15.00
Olga <u>Slack</u>	-	-	12.00	-
Keen Mountain <u>Slack</u>	-	12.00	-	-

TABLE VII (Cont'd.)

	<u>District</u>	<u>Lyons</u>	<u>McMaster</u>	<u>Mutual</u>
	\$	\$	\$	\$
<u>1956</u>				
Blue Diamond Coal Co.	-	16.80	-	-
Kentucky	-	16.80	-	-
Crown Royal Stoker	-	-	-	16.80
Island Creek Stoker	-	-	16.85	-
St. Bernard Stoker	-	-	14.85	-
**Prepared-Mix Pocahontas Slack and Stoker	-	14.90	-	14.90
***Prepared Mix	-	-	13.95	-
Olga Nut <u>Slack</u>	-	-	13.00	-

** Presumably $\$16.80 + \$13.00 \div 2 = \$14.90$.

*** Presumably $\$14.85 + \$13.00 \div 2 = \$13.925$.

1957

Colonel Jackhorn Stoker	-	18.75	-	-
Mary Gail Stoker	-	-	-	18.75
Scarlet Glen Stoker	-	-	17.10	-
Dixon Island Creek Stoker	-	16.95	-	-
Amherst Stoker	-	15.25	-	-
St. Bernard Stoker	-	-	15.10	-
Pocahontas <u>Slack</u>	-	-	-	13.00
Olga Nut <u>Slack</u>	-	-	13.00	-

The Statement of Evidence also sets out extracts from the official minutes of the Board of Education, Sault Ste. Marie, which describe the manner in which contracts for coal were awarded in each year.

In 1952 the Committee of the Board of Education expressed disappointment at receiving identical tenders and recommended that dealers be asked to submit revised tenders. In the event that identical tenders were again received the entire contract would be given to one dealer. When it was reported to the Board of Education that the dealers had refused to revise their tenders the coal contract for 1952-53 was given to Lyons at a price of \$15.25 per ton. It would appear that the coal supplied at this price was a 50/50 mixture of stoker coal at \$18.50 and slack coal at \$12.00 listed in the tabulation of tenders in Table VII.

The Board of Education minutes in 1953 record that as the tenders for coal were at the same price the contract should again be awarded to Lyons in the hope that other dealers would become more price conscious. A comparison of the tender prices given in Table VII with the dealer prices in Table IV shows that the prices quoted for public schools were the same for regular type stoker coal as the dealers' list prices. The same situation prevailed in the following year.

Tenders submitted for 1955-56 by Lyons, McMaster and Mutual had identical prices of \$18.00 per ton for regular type stoker coal but this price was lower than the dealers' current list price. In addition, Lyons and McMaster quoted on other brands of stoker coal at \$14.25 per ton and both quoted slack coal at \$12.00 per ton. The contract was given to McMaster at \$14.25 and McMaster also received the contract for 1956-57 for the same type of coal at \$14.85 per ton and for a mixture of 50/50 with slack at \$13.95. In the latter year, as will be seen from Table VII, other brands of stoker coal were quoted at \$16.80 by Lyons and Mutual and at \$16.85 by McMaster.

For the heating season 1957-58 identical prices for regular grade stoker coal were submitted on tenders for the public schools by Lyons and Mutual and these prices were the current retail prices. Other brands of stoker coal were offered by Lyons and McMaster at lower prices and the contract was given to McMaster for St. Bernard stoker at \$15.10 per ton. This was the type of coal which McMaster first supplied in 1955 for the public schools.

Information obtained by the Director on quotations made for the supply of coal to the Provincial Air Services Aerodrome reveals a somewhat similar pattern of uniform prices. The information is summarized in Table VIII:

TABLE VIII

TENDERS TO AERODROME

		<u>District</u>	<u>Lyons</u>	<u>McMaster</u>	<u>Mutual</u>	<u>Purity</u>
		\$	\$	\$	\$	\$
1952	Brands not known	18.75	-	-	18.50	-
1953	Brands not known	-	-	-	18.50	-
1954	Brands not known	-	-	18.50	18.50	-
1955	Brands not known	-	-	18.00	18.00	-
1956	Brands not known	-	-	18.75	18.75*	18.75
1957	Brands not known	-	-	19.00	19.00*	-
1958	Brands not known	-	-	19.00	-	-
1959	Brands not known	-	16.98	18.75	-	-

* 1 per cent - 30 days.

Information obtained by the Director from the Department of Defence Production with regard to the supply of coal to the armouries in Sault Ste. Marie also indicates a pattern of uniform prices. This information appears in summary form in Table IX:

TABLE IX

TENDERS TO NEW ARMOURIES

	District	Lyons	McMaster	Mutual	Purity
	\$	\$	\$	\$	\$
(Specifications: Coal Bituminous Nut Slack 1 $\frac{1}{4}$ " , high volatile, F.P.A. under 2400° F.)					
1952, 1,600 tons (max.)					
Pa. Stoker Nut Slack 1 $\frac{1}{4}$ " x 0	15.25*	-	-	-	-
Mixture 50/50 Stoker 1 $\frac{1}{4}$ " x 7/8" and 0 to $\frac{1}{4}$ "	-	-	-	15.25*	-
W. Va. Nut Pea and Slack 1 $\frac{1}{4}$ " x 0	-	15.25*	-	-	-
Kentucky Nut Slack 1"	-	-	-	-	15.25
* 2 per cent - 30 days.					
1953, 800 tons (max.)					
Black Watch Stoker Nut Slack 1" to 0	-	-	-	-	15.25
Gail Kentucky Stoker & Screenings 3/4" to 0	-	-	-	15.25	-
West Va. Nut Slack 1 $\frac{1}{4}$ " x 0	15.80	-	-	-	-
1954, 800 tons (max.)					
Mixture of $\frac{1}{4}$ " to 3/4" and 1/16" to $\frac{1}{4}$ "	-	-	-	15.50	-
Kentucky Nut Slack 1 $\frac{1}{4}$ "	-	15.75	15.65	-	-
1955, 600 tons (max.)					
W. Va. Med. Volatile F.P.A. 2700° F. 1" Screen	-	-	-	12.00	-
Mixture Coal 50% to spec. and 50% of above	-	-	-	15.50	-
Kentucky Nut Slack 1 $\frac{1}{4}$ "	-	15.75	15.65	-	-
(Specifications: Bituminous Prepared Stoker Large, high volatile, F.P.A. under 2400° F.)					
1956, 500 tons (max.)					
W. Va. Oil-Treated Stoker 1 $\frac{1}{4}$ " x $\frac{1}{4}$ "	-	-	15.83	-	-
Kentucky Stoker	-	-	-	18.75	-

TABLE IX (Cont'd.)

	<u>District</u>	<u>Lyons</u>	<u>McMaster</u>	<u>Mutual</u>	<u>Purity</u>
	\$	\$	\$	\$	\$
1957, 500 tons (max.)					
W. Va. Oil-Treated Stoker	-	-	16.73	-	-
Kentucky Nut Slack 1 $\frac{1}{4}$ " F.P.A. 2460°	-	16.73	-	-	-
W. Va. Prepared Stoker	-	-	-	16.80	-

TENDERS TO OLD ARMOURIES

(Specifications: Coal Bituminous Lump)

1952, 80 tons (max.)					
W. Va. High Volatile Bituminous Lump	-	-	-	-	17.00
W. Va. Mixture - Nut, Pea and Slack	-	17.00	-	-	-
W. Va. Stove Size	17.00	-	-	-	-

The Statement of Evidence presents information for 1957 on tenders for the supply of coal to the District Court House and gaol. Only McMaster and Mutual submitted quotations and both quoted \$19.00 per ton which was the current retail price for regular grade of stoker coal.

5. Evidence as to Continuance of the Arrangement
on Tenders

According to the evidence of Mr. R. H. Beaumont, President and General Manager of Lyons, his company had not been a party to any arrangement with other coal dealers respecting sales to institutions since the change in the control and management of Lyons which occurred toward the end of 1958. His evidence included the following:

"BY MR. MacLEOD:

Q. To your knowledge is your firm a party to an arrangement with Purity and McMaster whereby certain allowances are made in connection with sales to certain institutions in Sault Ste. Marie?

A. No.

Q. Have you to your knowledge supplied any information to Mr. Coulter as to your sales to certain institutions?

A. No.

Q. To your knowledge, in 1958 did your company receive a payment of something of the order of \$1,500 from McMaster as an adjustment on coal sales to institutions?

A. I have no knowledge of that.

Q. You say you have no knowledge of such arrangement being in existence now?

A. What was that question again?

Q. Did you say that you have no knowledge of such an arrangement being in existence now? Do you know if such an arrangement exists now?

A. I know now that there had been arrangements in the past.

Q. What is the situation now?

A. There is no arrangement.

Q. Has there been any arrangement since you became associated with Lyons?

A. No, there has not been.

Q. Were any steps taken to terminate the previous arrangement?

A. It was not brought to my attention and there was no action necessary or taken.

BY THE CHAIRMAN:

Q. When you say there is no arrangement now, do you mean there is no arrangement at all or that there is no arrangement involving your company?

A. There is no arrangement either involving the company or myself.

BY MR. MacLEOD:

Q. Would you necessarily know of such arrangement if it existed?

A. I would certainly know about it if anything like that happened since December 1, 1958.

Q. What I am doing is to just explore the possibilities that your coal man might be a party to the arrangement; would that be possible?

A. No. He started employment on May or June 1st of this year; I cannot remember the date, one or the other."

(Evidence, pp. 110-112)

At the hearing before the Commission Mr. Beaumont gave the following testimony:

"BY MR. MacLEOD:

Q. Is there any arrangement in effect now involving Lyons with respect to any payments to other coal dealers or payments by other coal dealers to Lyons in respect to institutional accounts?

A. No.

Q. Were any payments made in respect to the heating season ending in 1959?

A. No.

Q. When you gave evidence previously on the 4th or 5th August, 1959, the arrangements for these new dock facilities had not been completed; is that so?

A. That is true.

Q. And in your evidence you may recall you spoke of submitting two tenders. Those would have been submitted on the basis of the old facilities?

A. They would be part and part. The negotiations were going on and we were hopeful that they would be successful, but we could not be sure.

Q. I think you told me at the time, Mr. Beaumont, that having regard to the fact that you purchased your anthracite locally your dock facilities were sufficient for your purposes.

A. Is that a question?

Q. Do you recall telling me that?

A. Yes, I think so.

Q. Do you say these tenders you told me about, which are referred to on page 114 of the transcript -- I will read several questions and answers beginning on page 113. My question was:

'Do you know if in submitting tenders whether or not you have cut the price on any particular occasion from the going price at the time?

A. Yes, that is true. In other words, when a quotation is made that price will be -- depending on the size it may be a smaller price than what is considered to be the retail price.

Q. To your knowledge, have tenders setting out such smaller prices actually been submitted by your firm?

A. Yes.

Q. To whom was it made?

A. It was made to the federal government on the post office.

Q. That would be the building we are in now?

A. Yes, this building right here, and to the local school board.

Q. And your recollection is that in both those instances the prices were lower than the regular prices?

A. Yes.

Q. Were those tenders submitted since you became associated with Lyons?

A. Yes.

Q. Were you consulted personally about them?

A. Yes.

Q. Do you know if it disturbs your domestic business if you are fortunate enough to secure a number of large tenders in a year? What I am getting at is this. If you happened to secure a number of large tenders, would it run you short for your domestic customers or anything like that?

A. That is an operational problem.'

What I have read is a record of evidence which you gave on August 5th last, and my question now is whether the two tenders therein referred to were submitted on the basis that only the old storage facilities would be available to you?

A. I think I have to repeat what I said before. It would be part and part. We were negotiating about the other dock facilities and we were hopeful that they would be concluded favourably, and we would be able to operate properly and have the full facilities available to service them and make a profit.

Q. You had however committed yourself to supply the coal if the tender was accepted regardless of the outcome of the negotiations with the Algoma people?

A. That is right.

THE CHAIRMAN: Have we on record an approximate date on which the tenders were submitted?

MR. MacLEOD: I do not think we have, but we can only conclude that they were prior to August 5th, 1959, on which date the witness gave his evidence.

THE CHAIRMAN: Perhaps he can give us the dates of two tenders, the School Board and the Post Office.

A. I have a list here prepared by the manager of our coal department. The Board of Education was submitted on June 8th; the Post Office, Department of Public Works, would be June 16th. Those are the dates referred to here, but whether they are the dates of the tender I could not say too exactly.

Q. Then your negotiations, I take it, were proceeding for several months before they came to a conclusion.

A. Yes, that is true.

MR. MacLEOD: What does that tender cover? What is the amount of fuel?

A. 240 tons.

Q. And the price you submitted was \$18.00?

A. Yes.

Q. For Island Creek Stoker?

A. Yes.

Q. That apparently is the tender, because it agrees with the particulars supplied to us by the Department of Public Works.

(The witness withdrew"

(Hearing, pp. 68-71)

It will be noted from Table VIII (Tenders to Aerodrome) that the quotation submitted by Lyons in 1959 was substantially lower than the quotation made by McMaster and substantially lower than the prices quoted in previous years.

Evidence given by Mr. McMaster and Mr. Coulter was that so far as McMaster and Purity were concerned the arrangement in regard to sales to certain institutions had continued. Mr. McMaster gave the following evidence:

"BY MR. MacLEOD:

. . .

Q. Did you say that this arrangement has been in effect since you came to Sault Ste. Marie?

A. I do not know how long it has been in effect, but it has been in effect since I came to the Soo. For this simple reason, they did table it with me and I at that time had full jurisdiction as General Manager and Director; I had authority to throw it out should I wish to, and I did go for it.

Q. Is it still in effect?

A. Yes, it is.

Q. And have payments been made among the companies as shown on the sheets of which 308 is an example for one year?

A. Yes.

Q. Have such payments been made each year?

A. Since I have come in anyway.

Q. Have the payments for 1959 been made?

A. No sir.

Q. Have they been calculated?

A. No sir. You mean 1958-59?

Q. 1958-59.

A. No, they have not. We just have not got around to them yet, . . ."

(Evidence, pp. 56-57)

Mr. Coulter of Purity also gave evidence that the arrangement was still in effect:

"BY MR. MacLEOD:

Q. When were the last payments made, do you know? What year would the last payments cover?

A. June, 1958.

Q. Is the arrangement still in effect?

A. As far as I know, yes.

Q. Has anything been done toward calculating for 1958-59?

A. No. I have always waited for the others. I have prepared the calculations but I have always waited for the others to provide me with the information.

Q. Have you received any information this year?

A. No, I have not.

Q. But it is your understanding the arrangement is still in effect?

A. As far as I know, yes."

(Evidence, pp. 123-24)

CHAPTER IV

CONCLUSIONS

This inquiry has been concerned with the distribution and sale of coal in a relatively limited market in which at all relevant times the number of dealers engaged in supplying coal has been small and at the conclusion of the period covered by the inquiry has been reduced to three. The situation at Sault Ste. Marie with respect to the handling of coal was that ordinarily it was cheaper to bring coal in by ship than by rail but that the dock space available for coal storage was limited. Further, shipment of coal by water was possible only during the navigation season, which meant that stocks had to be accumulated before the close of shipping each season to be drawn upon during the winter.

It is apparent that opportunities for the competitive sale of coal in Sault Ste. Marie would be more limited because of the market and supply situation than in an area where the number of dealers was greater and where there were alternative means of transportation at approximately the same level of cost. In the circumstances which existed in the Sault Ste. Marie coal market it was important that by concerted action of the dealers the public was not deprived of such opportunities for the competitive distribution of coal as would otherwise exist. The evidence in the inquiry leads to the conclusion that this was the effect of the arrangements and practices among the coal dealers in Sault Ste. Marie.

We may first consider the arrangement among the dealers to share part of the proceeds of sales made on tender by any one dealer to designated institutions. It will be recalled that under this arrangement the dealer securing a particular contract agreed to share on an equal basis with other dealers a specified part of the proceeds from the sale of such coal. This arrangement was defended on the ground that it was necessary because of the limitations of coal dock space in Sault Ste. Marie which made it desirable for dealers to be able to draw, when short of coal, on the stockpiles of competitors. It was contended that if a particular dealer, in a particular season, succeeded in obtaining all the contracts offered on tender, or a considerable part of them, his limited dock space would not permit him to supply the tonnages required by such contracts without jeopardizing some part of his

sales to his domestic or commercial customers. The latter class of trade constituted the main part of the business of the dealers and they did not want to run the risk of losing any of it through lack of coal. If a dealer secured a large volume of contract business in one year and was unable, because of insufficient storage stocks of coal, to supply the needs of all his domestic or commercial customers, those of his customers who had to turn to other dealers would be likely to remain customers of the firm which supplied them. If, later, the dealer who had previously secured a large volume of contract business was unsuccessful in his bids he would be left with a reduced number of domestic and commercial customers. The arrangement for profit-sharing on sales on tender, it was contended, was necessary to make dealers willing to share their supplies of coal with any dealer who ran short during the heating season and thus create conditions of assurance of supply which would lead dealers to tender for contract business.

The Commission does not consider that the arguments advanced in support of the profit-sharing arrangement among the coal dealers in Sault Ste. Marie can be accepted in justification of the arrangement. It is the opinion of the Commission that the arrangement operated to restrict competition among the dealers in the sale of coal to the public and was to the public disadvantage.

In the absence of a profit-sharing arrangement each dealer would realize that it would be in his own interest to be able to make purchases from a dealer favourably situated with respect to supplies of coal in a period when he was short, and he would want to protect his own interest by making supplies available, when he was favourably situated, to another dealer who might be in need of a particular kind of coal. It will also be noted from Table III that in some years a considerable part of the sales of coal between dealers consisted of slack coal. This coal, which arises from the degradation of stocks in storage, was referred to as a drug on the market and dealers, therefore, would have a direct incentive to sell such coal to other dealers. Not only would there be a direct incentive but in order to maintain favourable relationships for the sale of slack coal, when necessary, a dealer would be ready to be accommodating in regard to other classes of coal which he might have in ample supply.

It will be recalled that the tonnage of coal sold on tender under the arrangement was estimated at about 10 per cent of the total supply of coal handled annually by the Sault Ste. Marie dealers. The available data suggests that this may have been the relationship in the most recent years and that in earlier years the proportion was smaller. It has been shown that the actual volume of tonnage sold on tender (Table VI) was less than 3,500 tons in any year. It will also be seen from Table I that variations in purchases of coal by McMaster

and to some extent by Lyons have been greater than the total tonnage involved in sales on tender. In 1954 McMaster purchased 17,912 tons of coal and coke, while in 1955 McMaster's purchases amounted to 30,401 tons and in 1956 to 25,853 tons. Lyons' purchases of coal and coke totalled 12,134 tons in 1955 and 7,514 tons in 1956. When dealers were able to cope with such large changes in tonnages from one year to another without resorting to any great degree or at all to getting supplies from other dealers, it appears to the Commission that possible variations in tonnages supplied on contract could have been handled in the ordinary course of business.

The evidence indicates that to a considerable extent coal supplied on contract was delivered to the customer at the convenience of the dealer with substantial quantities being put in the customer's bins during the off-season. To the extent that deliveries were made before the close of navigation the problem of stocking sufficient coal to supply customers during the winter months was lessened.

It is questionable whether the factor of dock space for coal storage at Sault Ste. Marie was of the importance which was given to it by witnesses or that the limitations were as great as those suggested by the Director on the basis of the evidence available to him. Between the time evidence was taken in August, 1959 and the hearing held by the Commission in February, 1960, Lyons had rented a substantial amount of additional dock space for coal storage. This dock space was in existence previously but there appear to have been no strong efforts on the part of any dealer to rent it. It is also the case that the total amounts of coal handled by Sault Ste. Marie dealers were larger in earlier years than in the more recent period, and if dock space had been of such great importance it would have been expected that greater efforts would have been made to retain a larger amount of dock space for coal purposes. It may be that the existence of the agreement to share part of the proceeds of the sales of coal on tender lessened the incentive of dealers to ensure that they had an appropriate amount of dock space for their coal business. It may also be that the agreement made it possible to operate with less total dock space than would have been required by the dealers in the absence of such an agreement. If so, there may have been an added financial advantage to the dealers in the agreement.

The arrangement among the dealers to share part of the proceeds of the sales of coal to certain institutions cannot be viewed in isolation but must be considered in relation to other practices followed by the dealers as revealed by the evidence in the inquiry. It has been established that not only did the dealers share equally in an agreed portion of the proceeds of the sales of coal on certain contracts but that in submitting quotations on the tenders the same or closely similar prices were quoted by each dealer submitting tenders, and for the regular grades of stoker coal such prices were

commonly the retail price with no allowance for the larger quantities usually required on contract.

It would be expected that less costs per unit would be involved in delivering coal in substantial quantities on contract in comparison with sales to many retail customers. The evidence of witnesses was to this effect. Not only would costs per unit tend to decrease with the size of the order but as deliveries to institutions usually could be made at the convenience of the dealer they could be fitted into the general work schedules of the firm so as to effect the most economical use of labour and equipment and thus further reduce general costs per unit.

The sale of coal on tender at retail prices would, therefore, yield a higher profit than the sale of an equivalent amount of coal to domestic or small commercial customers and, in the absence of other considerations, there would be an incentive for a dealer to quote independently at a lower price in order to obtain such business. The fact that quotations on tenders continued to be made at retail prices during the period covered by the inquiry leads the Commission to conclude that the profit-sharing arrangement on tenders supported the practice of uniform prices among the dealers and the maintenance of retail prices in quoting to institutions covered by the profit-sharing arrangement.

It is clear that if the dealers had been competing in price both in regular trade and on tender business they would not have continued an arrangement which required the successful bidder to share part of his proceeds equally with his competitors. Further, under competitive conditions it would be expected that the margin on sales secured by the successful bidder would be more closely related to the costs involved in filling substantial orders and would not lend itself to be shared, in part, on an equal basis among competitors.

It has been shown by the evidence that in some of the later years within the period of the inquiry one or more dealers have brought into Sault Ste. Marie brands of stoker coal with a lower cost than regular grades of stoker coal and these have been offered on tenders at prices lower than the prevailing retail price of regular grades of stoker coal. There is some evidence that the bringing in of cheaper coals was the result, at least in one instance, of the objection of one institutional purchaser to being offered coal at retail prices by all bidders. Although the supply of lower quality coals at lower prices may have afforded some saving in cost to the purchaser it must be borne in mind that the dealer supplying the coal would share the agreed-upon portion of the proceeds of such sales with the other dealers in the arrangement. In the absence of the arrangement payments to other dealers would not be involved and each dealer would be concerned only with his own costs in preparing a tender.

One of the submissions made on behalf of the dealers was that the price of coal in the Sault Ste. Marie area for the period 1952 to 1958 compares very favourably with prices in other cities where comparable circumstances exist, apart from the matter of limited dock and storage facilities. In support of this submission a table was filed with the Commission listing the prices of anthracite, stoker and Pocahontas coal and coke at five Ontario cities and at Sault Ste. Marie. The table, presented here as Table X, was stated to have been based on information obtained from bulletins of the Canadian Retail Coal Association.

TABLE X

COMPARATIVE PRICES OF COAL IN
SELECTED CITIES IN ONTARIO
1952 - 1958

Year	Area	Anthracite (nut)	Coke (nut)	Stoker	Pocahontas (stove)
		\$	\$	\$	\$
*1952	Belleville	25.50	25.50	16.50-18.75	22.50
	Lakehead	26.90	26.90	15.50-19.80	23.50
	Sudbury	26.75	26.60	16.35-19.55	23.60
	Hamilton	25.00	24.00	14.00-20.00	20.50
	Timmins	28.50	31.50	18.00-23.00	25.50
	Sault Ste. Marie	25.50	23.50	18.50	23.00
1953 (Dec. '52)	Belleville	27.75	25.50	16.50-18.75	23.50
	Lakehead	26.40	26.00	16.00-20.50	24.00
	Sudbury	28.50	27.85	16.00-20.00	24.60
	Hamilton	25.75	25.00	14.00-18.75	21.00
	Timmins	31.75	-	18.50-23.75	-
	Sault Ste. Marie	25.50	25.50	18.50	23.00
1954	Belleville	27.75	25.50	16.00-18.75	23.50
	Lakehead	26.75	25.00	16.00-19.95	24.50
	Sudbury	29.70	28.00	16.05-19.40	24.50
	Hamilton	26.50	24.00	14.50-18.50	21.50
	Timmins	32.75	30.00	23.25	-
	Sault Ste. Marie	26.00	25.50	15.75-18.50	23.00
1955	Belleville	26.50	25.50	16.50-18.75	23.50
	Lakehead	26.75	25.00-26.00	16.70-19.95	24.50
	Sudbury	28.25	28.00	19.20-20.40	25.75
	Hamilton	25.50	20.50	14.00-20.00	21.25
	Timmins	31.75	-	18.75-23.00	-
	Sault Ste. Marie	26.00	25.50	16.00-18.75	23.00
*1956	Belleville	26.50	25.50	17.50-19.50	24.50
	Lakehead	27.75	26.00	17.50-21.35	25.25
	Sudbury	28.75	-	17.00-21.80	26.50
	Hamilton	24.50	25.00	17.25-19.00	22.50
	Timmins	30.75	-	19.50-23.50	-
	Sault Ste. Marie	26.50	25.50	16.00-18.75	24.00-25.00
1957	Belleville	28.50	26.50	17.50-19.50	25.50
	Lakehead	27.75	27.00	17.00-21.75	25.90
	Sudbury	31.50	-	17.30-22.65	27.00
	Hamilton	27.50	25.00	16.50-19.50	24.00
	Timmins	-	-	-	-
	Sault Ste. Marie	26.50-28.00	25.50	16.00-19.00	25.00
*1958	Belleville	28.50	26.50	18.50-20.50	26.50
	Lakehead	29.00	27.00-27.75	18.40-22.25	26.40
	Sudbury	29.00	34.00	17.95-23.50	26.00
	Hamilton	26.00	25.00	19.25-19.75	24.50
	Timmins	31.00	32.00	22.50	-
	Sault Ste. Marie	28.00	25.50	16.00-19.00	25.00

* Denotes summer prices

While the figures in this table indicate that prices of coal at Sault Ste. Marie in some cases have been lower than the prices given for some other cities and in some other cases have been at about the same level, the information does not assist in appraising the situation at Sault Ste. Marie. The table does not give any information about the conditions under which dealers operate in other cities or whether customers find competitive prices in making purchases of coal. Particularly no information is provided as to the sale of coal by tender. It may be noted, however, that in 1952 and 1953 a range of stoker prices is shown for all cities except Sault Ste. Marie, for which city a range of prices is shown for the first time in 1954.

It is not possible, of course, to say what the price of coal would be at Sault Ste Marie in the absence of the profit-sharing arrangement and in the absence of restrictions on price competition in the sale of coal generally and on contract. It is the opinion of the Commission that, if dealers were establishing their prices independently and without considering that part of the proceeds of certain sales would have to be shared with their competitors, prices for some classes of coal for some classes of trade would be lower than they would be under the conditions which prevailed during the period of the inquiry. The fact that a substantially lower tender was submitted by Lyons on at least one occasion in 1959, after the firm came under new control, supports this view.

It is the conclusion of the Commission that the arrangement among coal dealers in Sault Ste. Marie to share part of the proceeds of sales of coal to certain institutions, regardless of which dealer actually supplied the coal, operated to lessen competition in the distribution and sale of coal in the Sault Ste. Marie area to a degree which was detrimental to the public interest. The Commission also believes that the profit-sharing arrangement supported the practice of the dealers in establishing common prices and in using such common prices as a basis for quotations on tenders to institutions requiring substantial quantities of coal. Such practices deprived customers whose scale of purchases and method of accepting delivery of coal might be expected to result in economies for the dealer from securing any advantage in price from the savings in cost which their orders would appear to make possible.

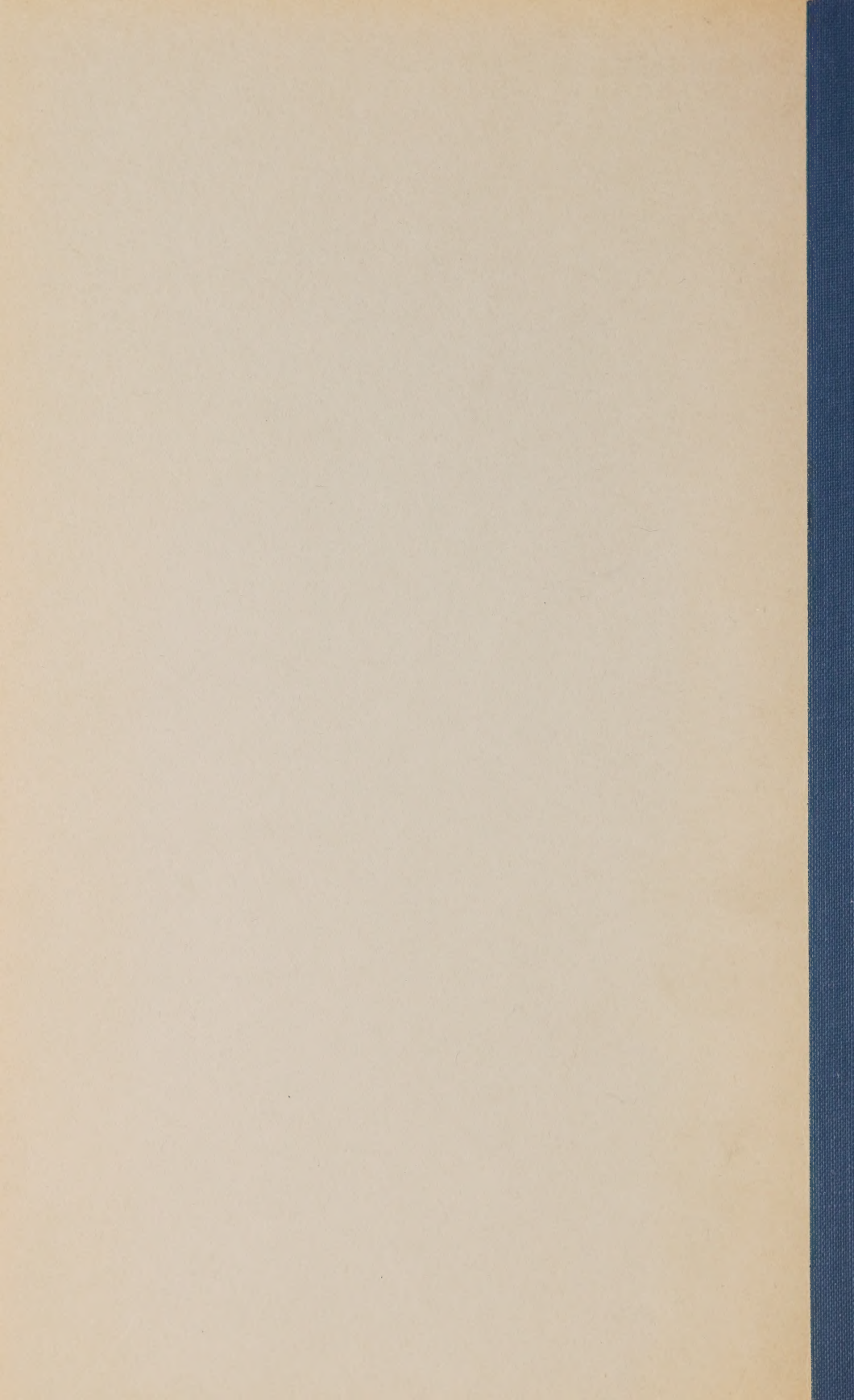
The Commission is of the opinion that the profit-sharing arrangement among the coal dealers in Sault Ste. Marie should be abandoned if this has not already happened. The Commission believes that the public interest would be best served if each coal dealer in Sault Ste. Marie followed the policy of preparing tenders for the sale of coal to institutions independently on the basis of his own

costs and method of operation. Similarly, the establishment of prices by each dealer for the general trade should be on an independent basis so that differing costs resulting from the purchase of various grades or qualities of coal or economies in operation would have opportunity to be reflected in the dealer's selling prices. In this way the public would secure the benefits of competition in price.

(Sgd.) C. R. Smith
Chairman

(Sgd.) A. S. Whiteley
Member

Ottawa,
July 26, 1960.



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